



**FIFTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER**

December 21, 1985 to December 20, 1986

OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

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June, 1987

BUREAU DU COMMISSAIRE AUX
PLAINTES DU PUBLIC

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Dear Mr. Attorney General and Mr. Solicitor General:

Pursuant to Section 3(7) and Section 3(8) of the
Metropolitan Toronto Police Force Complaints Act, 1984, I
am pleased to enclose herein the Fifth Annual Report of the
Office of the Public Complaints Commissioner.

Yours sincerely,

CLARE E. LEWIS
Public Complaints Commissioner

ml
Encl.

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PART I

Overview of Complaints System Expansion of System

PART I - OVERVIEW OF COMPLAINTS SYSTEM;
EXPANSION OF SYSTEM

A. AN OVERVIEW

The Second Annual Report of the Office of the Public Complaints Commissioner, which covered the 1983 year, included a discussion of how the complaint process functions. The Third Annual Report explained the changes implemented by the new legislation, the Metropolitan Toronto Police Force Complaints Act, 1984, which became law on December 1, 1984.

The Office of the Public Complaints Commissioner has maintained a considerable community information program, and it appears that more people are now aware of the existence of the legislation. However, it has become apparent that the public is not clearly aware of the Commissioner's role in the complaint system. Police officers generally have a better understanding of the Commissioner's role, but even police officers sometimes express misunderstanding about the decision-making power of the Commissioner as opposed to that of Boards of Inquiry.

A basic premise of the system is that the police force has the responsibility of performing initial investigation into complaints by members of the public. The vast majority of complaints are investigated initially by the police. However, the Commissioner may undertake investigation, using his own civilian investigators. The Act states that the Commissioner can take over investigation on request of the Chief of Police, or when the Commissioner has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of the investigation, or at any time 30 days or more after the complaint has been filed. The major part of the Commissioner's function, therefore, is not initial investigation but rather the monitoring of the police investigation into the complaint, and the undertaking of review and reinvestigation on the request of the complainant, after the Chief of Police has reached a decision on the complaint.

The monitoring function is possible because the Commissioner gets a copy of all complaints as soon as they are filed, as well as a copy of all monthly investigative reports as they are completed. The Commissioner maintains on-going communication with the Public Complaints Investigation Bureau in regard to general issues pertaining to investigation, as well as with reference to particular files.

If the complainant requests a review, the Public Complaints Commissioner can reinvestigate the matter, and must make a decision about the complaint on the basis of the available evidence. If the Commissioner agrees with the decision of the Chief of Police, a review report is written and sent to the complainant, the subject officer, and the Chief of Police. Whether the Commissioner agrees or disagrees with the Chief of Police, he may make recommendations aimed at preventing the problem encountered by the complainant from recurring. Finally, the Commissioner may send the case to a Board of Inquiry. The Commissioner has no further decision-making power in the case.

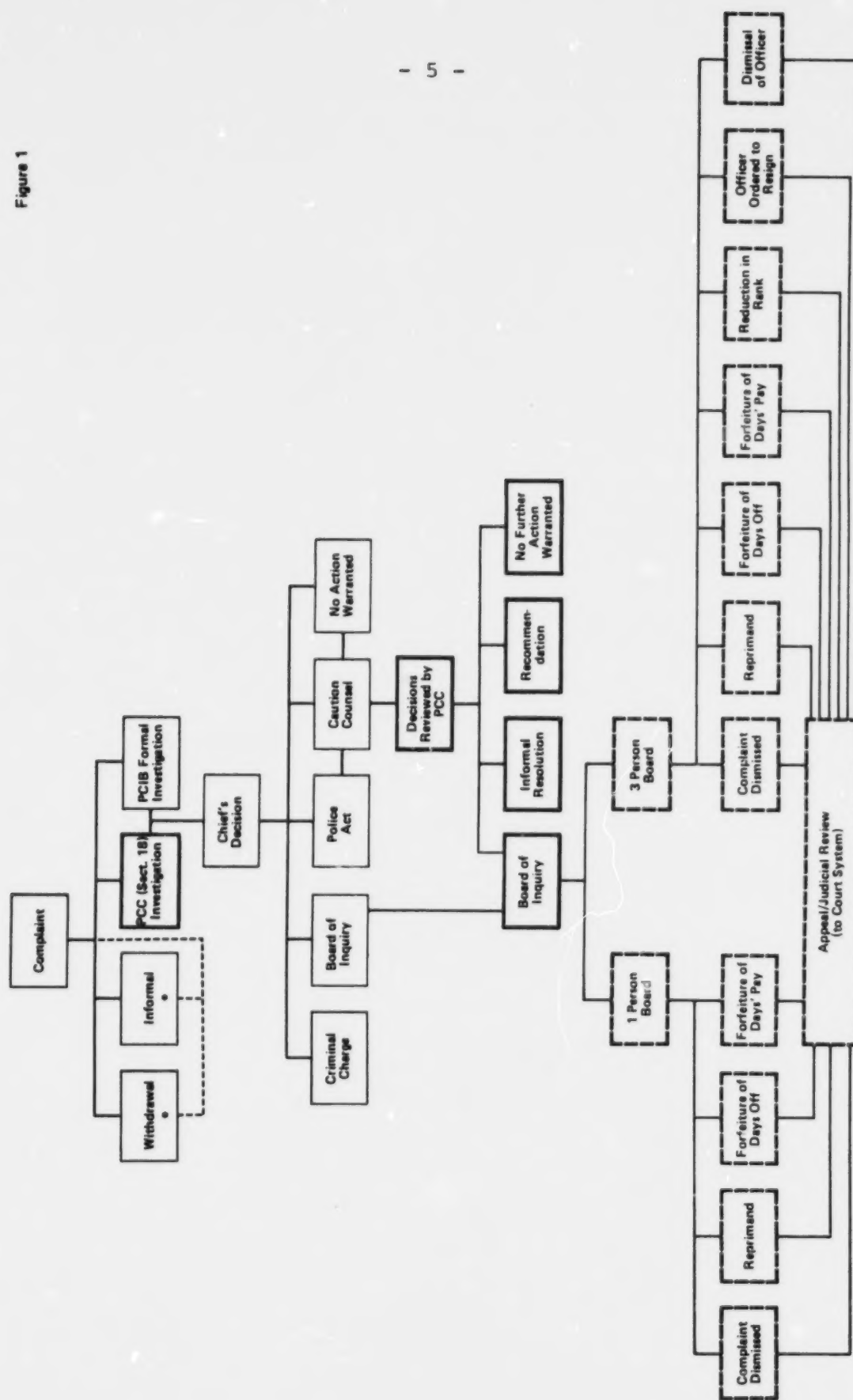
A Board of Inquiry is a panel of either one or three civilians (the number depends on whether the complaint is minor or serious). The Board has the responsibility of holding a hearing, much like a court hearing, into the complaint. The officer is usually represented by counsel, and the complainant may also be represented. A lawyer representing the Attorney General presents the case, witnesses are called, evidence is presented, and arguments of law are made. At the end of the hearing, the Board decides whether the officer is guilty of misconduct. If the Board concludes that the officer is guilty of misconduct, it

may discipline the officer. Penalties range from a reprimand to dismissal from the police force.

In a chart on the following page, an attempt is made to show the possible stages of a complaint. These stages can be roughly divided into the police investigation and resolution stage, the Public Complaints Commissioner review stage, and the Board of Inquiry stage.

Please note that in the interest of clarity, the chart illustrates only the most commonly-occurring events in the complaint system.

Figure 1



* When a complaint is withdrawn or informally resolved, the Commissioner reviews the file and, in certain circumstances, has the power to overturn the withdrawal or the informal resolution. In these cases, the complaint continues through the system.



B. EXPANSION OF THE SYSTEM

One June 19, 1986, the Attorney General of Ontario introduced legislation to permit the expansion of the Office of the Public Complaints Commissioner. An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984, which is currently Bill 18 before the legislature, would allow any municipality in Ontario to choose to take advantage of the services of the Office of the Public Complaints Commissioner in respect of local complaints against the police. Under the proposed legislation, a local office of the Public Complaints Commissioner would be established in each municipality choosing to participate in the system. The system would be identical to that in operation in Metropolitan Toronto, with investigation in the first instance conducted by a specially designated unit of the local police force, and decisions on appropriate action made by a designated senior officer of that police force. As with the Toronto system, the Public Complaints Commissioner would have a monitoring function and a duty to conduct reviews upon request by any member of the public who is not satisfied with the resolution of his or her complaint by the local police force. If, following a review, the Commissioner determined that the complaint should be heard by a Board of Inquiry, its members would be drawn from a panel established for the local area.

The legislation that would allow municipalities to choose this system has not yet been passed into law. A copy of the Bill is included in the appendix of this report.

PART II
Research and Statistics

PART II - RESEARCH AND STATISTICS

A. INTRODUCTION

Since its inception, the Office of the Public Complaints Commissioner has routinely conducted research on data taken from all closed complaint files. This research activity permits the examination of the caseload from a statistical perspective, allowing trends to be identified over the years. In addition, the research enables the Commissioner to evaluate the functioning of the office.

In 1986 there were 735 cases closed by the Office of the Public Complaints Commissioner. A "case" involves a single complainant making one or more allegations based on a single incident or series of incidents. A case is closed when all outstanding issues with respect to the allegation have been resolved. Because cases vary in complexity, they vary in duration. Some cases may be resolved very quickly, while others which require extensive investigation may last over a year.

B. RESEARCH DATA

1. The Incident

Every complaint results from an incident in which a member of the public has some contact with the police. The first incident may evolve into more than one contact in more than one location. The location of the primary incident is shown in Table 1. The locations are listed by frequency of occurrence, with the most common being listed first. As in previous years, the most common location of the primary incident was the street (50.9%). The next most common location was a private residence (17.8%).

A single incident may give rise to several allegations. The listing of allegations is presented in Table 2. The majority of complainants (60%) made more than one allegation. In total, 1,433 allegations were made. For each case, details of the three most serious allegations were recorded. Thus, specific details are available for 1,364 or 95.3% of all the allegations made. Specifically, 444 individuals made two allegations and 185 made three allegations.

TABLE 1

<u>Location of Incident</u>	<u>Number</u>	<u>Percent</u>
Street	374	50.9
Residence	131	17.8
Public Place	91	12.4
Police Building	81	11.0
Plaza/Mall	31	4.2
School Yard/Park	12	1.6
Police Vehicle	10	1.4
Other	<u>5</u>	<u>0.7</u>
TOTAL	735	100.0

The 1,364 allegations are presented in Table 2. There are two ways of examining the distribution of allegations. One is with respect to the total number of allegations. Thus, the 347 allegations of assault represent 25.4% of the 1,364 allegations that were documented. The other way is relative to the number of cases. Here the 347 allegations of assault represent 47.3% of the 735 cases. Both percentage distributions are presented in Table 2.

The 19 categories of allegations can be grouped into four major areas as they are presented in Table 2. It would appear that the most common allegation is that officers failed to act according to proper police procedure (40.9%); this was closely followed by threatening or abusive behavior (30.5%) and by physical assaults/excessive use of force (25.4%). Personal abuse of authority was cited in (3.3%) of the allegations.

In a large urban centre such as Toronto, with citizens of diverse ethnic and racial backgrounds, any bias displayed by the police is a matter of concern. The complaints were carefully examined to determine if any of the allegations were of demonstrations of bias against minority groups. In 9.8% or 72 of the complaints, there was some mention of a racial or ethnic slur being made. In three additional cases

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there was some reference to a disparaging statement about
homosexuality.

TABLE 2

TYPE OF ALLEGATION

(N = 735)

<u>Physical Assault/Excessive Force</u>	<u>Number</u>	<u>% of Allegations</u>	<u>% of Cases</u>
Common Assault	321	23.5	43.7
Assault Causing Bodily Harm	21	1.5	2.9
Sexual Assault	5	0.4	0.7
	<u>347</u>		
<u>Threat or Verbal Abuse</u>			
Incivility/Verbal Abuse	261	19.1	35.5
Harassment/Threat	155	11.4	21.1
	<u>416</u>		
<u>Failure to Act According to Police Procedure</u>			
General	257	18.8	35.0
Neglect of Duty	74	5.4	10.1
Damage/Mishandle Property	78	5.7	10.6
Inadequate Police Service	10	0.7	1.4
No Follow-Up	7	0.5	1.0
Improper Arrest/Detention	73	5.4	9.9
Improper Search	38	2.8	5.2
Irregularity With Evidence	13	1.0	1.8
Improper Use of Discretion	8	0.6	1.1
	<u>558</u>		
<u>Personal Misuse of Authority</u>			
Deceit	8	0.6	1.1
Breach of Confidence	4	0.3	0.5
Intoxication	5	0.4	0.7
Improper Driving	13	1.0	1.8
Theft/Corruption	13	1.0	1.8
	<u>43</u>		
	<u>1364</u>	<u>100.1</u>	

In describing the allegations, the actual incident which lead to the contact between the complainant and the police was noted. It must be remembered that this notation represents the first point of contact; others may have occurred as the situation evolved. The three most common points of contact were investigation under the Highway Traffic Act (28.2%), criminal investigation (25.2%), and arrest (23.1%). The remaining incidents are listed in Table 3. In previous years, the ordering was criminal investigation, arrest and traffic investigation. Therefore, 76.5% of the incidents involved police intervention into alleged illegal activity. The complainant was charged by the police in 35% of the incidents. The details are presented in Table 4. In 95.7% of these cases, (247), the charge was laid prior to the complaint being filed.

An example of an incident as taken from the 1986 files, for each precipitating factor, is presented below:

Criminal Investigation

Complainant was the victim of an assault and theft. Police transported complainant to hospital but took no investigative action until contacted by complainant on his release from hospital 9 days later. Complainant alleged neglect of duty.

TABLE 3

<u>Precipitating Factor</u>	<u>Number</u>	<u>Percent</u>
Traffic Violation/Accident	207	28.2
Criminal Investigation	185	25.2
At Arrest	170	23.1
Domestic Incident	20	2.7
Parking	17	2.3
Request for I.D.	12	1.6
Other	32	4.4
None	<u>92</u>	<u>12.5</u>
TOTAL	735	100.0

TABLE 4

<u>Charge Against Complainant</u>	<u>Number</u>	<u>Percent</u>
No Criminal Charge	477	64.9
Obstruct/Assault Police	58	7.9
Assault	57	7.8
Property Offence	55	7.5
Driving Offence	37	5.0
Intoxication/Disorderly	16	2.2
Public Mischief	7	1.0
Other	<u>28</u>	<u>3.8</u>
TOTAL	735	100.1

Arrest

Complainant was arrested by officers acting on information that the complainant had committed an assault. Complainant alleged that his mother was pushed aside at the door, the house and his van were illegally searched, the officer used abusive language to complainant and his father, and that the officer assaulted him.

Traffic Violation

Complainant alleged having been stopped and ticketed by the same officer on eight different occasions after an incident in which he had an argument with the officer. All eight charges had been dismissed in court. Complainant alleged that officer was harassing him.

Parking Violation

Complainant's car was parked in an illegal parking space. She was notified by a work crew that the car was in their way and that a tow truck had been called to take it away. She parked her car in a legal parking space. Approximately one-half hour later a tow truck acting under the instructions of the officer towed the car away from the legal parking space.

By-Law Investigation

Officers investigated a complaint of excessive noise from music. During the course of investigation, the complainant alleged that officers assaulted him and his wife.

Domestic Dispute

Complainant called the police after an argument with her husband in which the husband assaulted the complainant and threatened to throw her over the balcony. The complainant alleged that although she showed the police the marks on her neck, and stated that she wanted her husband out of the apartment, the officers did not proceed with charges against the husband.

Identification Request

Complainant and friends were standing near an apartment building. Complainant alleged that officers stopped, asked for identification, and made racist remarks.

Other

Complainant attended court on a subpoena in order to testify against an accused person. The charges against the accused person were withdrawn because the police officer did not show up in court. Complainant alleged that the police officer did not notify the court or the complainant in any way that he would not be at court that day.

No Apparent Incident

Complainant alleged that as he was stopped in his car waiting for a traffic light to change, he saw two officers leaning over a man who was lying on his back in the doorway. Complainant alleged that the officers were hitting the man on the face and head.

There were 278 (37.8%) complainants who alleged some sort of physical injury occurring as a result of a confrontation with police. Of these, 57 (20.5%) alleged more than one injury. The details of these injuries are presented in Table 5. Most, (85.6%) of the injuries involved cuts and bruises.

As with any other complaint, allegations of assault must be proved beyond a reasonable doubt. Photographs of injuries are very useful as evidence in the resolution of these allegations. Photographs were taken of half (140, 50.4%) of the complainants who alleged injuries. Details of

these pictures are presented in Table 6. Unlike previous years, the Office of the Public Complaints Commissioner was most likely to be involved in taking photographs (59, 42.1%). The police identification unit had taken 30.7% of the photographs in the course of compiling identification documents.

On the basis of the description in the allegations, medical reports and photographs, the P.C.C.'s researcher made a subjective evaluation of injuries. The criteria used by the researcher were as follows:

MINOR INJURIES: require little or no medical attention, such as scratches, minor headaches, etc.

MODERATE INJURIES: have visible or identifiable symptoms, such as cuts, bruises, etc.

SERIOUS INJURIES: such as fractures, teeth injuries, cuts deep enough to require stitches.

TABLE 5

<u>Injuries to Complainant</u>	<u>Number</u>	<u>Percent</u>
No Injuries	457	62.1
Cuts/Bruises	238	85.6
Fractures	13	4.7
From Handcuffs	8	2.9
Groin	6	2.2
Teeth	5	1.8
Internal	5	1.8
Other	<u>3</u>	<u>1.1</u>
TOTAL	278	100.1

TABLE 6

Photos of Injuries

Office of the Public Complaints Commissioner	59	21.2
Police I.D. Unit	43	15.5
PCIB	20	7.2
Complainant	3	1.1
Other	15	5.4
None	<u>138</u>	<u>49.7</u>
TOTAL	278	100.1

Of the 278 complainants who alleged injuries, 145 (52.2%) were classified as minor, 108 (38.8%) were seen as being moderate, and 21 (7.6%) were serious. Of the persons who claimed injuries, 120 (43%) attended hospital for treatment of their injuries.

Personal injury was not the only issue covered in complaints. A total of 62 complainants alleged damage to personal property. In 52 of these cases, the damage was judged to be minor. The remaining 10 cases involved moderate to severe damage.

2. Characteristics of Complainants

81.6% of complainants were male. Information as to age was given by 616 complainants. Of these, over a third (223, 36.2%) were 25 years old or younger. Just over one half (311, 50.6%) were in the 26 to 45 year age range. The remaining complainants were over 45 years old.

3. Characteristics of Officers

Most allegations (94%) involved fewer than five officers. Specific data were collected on the first four officers listed in each complaint. The rank of these officers is shown in Table 7. Over three quarters (77.1%)

of the officers cited in the complaint were constables in the First Class category (usually, an officer must have served at least four years before s/he gains First Class Status). Over three quarters (76.2%) of the officers had more than five years experience on the police force (Table 8). No officer above the rank of Staff Sergeant was named in a complaint. The vast majority (98.8%) of the officers were on duty at the time the alleged incident took place.

In total, there were over 1,938 individual police officers named in 606 complaints. The majority of complainants cited one (316, 52.1%) or two (165, 27.2%) officers as being involved. The specific number of officers is listed in Table 9.

4. Police Division in Which Complaint Arose

The police Divisions in which the alleged incidents occurred are listed in Table 10. The largest number of complaints occurred in 52 Division (111, 15.1%). This Division is responsible for the downtown core of Toronto where there is a high volume of activity. The next highest number of complaints arose in 14 Division (75, 10.2%). 14 Division is adjacent to, and west of 52 Division.

TABLE 7

<u>Rank of Police Officer</u>	<u>1985</u>		<u>1986</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
Inspector or Higher	1	0.1	-	-
Staff Sergeant	23	2.0	25	2.3
Sergeant	115	9.9	111	10.2
Constable 1	928	80.1	840	77.1
Constable 2	58	5.0	37	3.4
Constable 3	23	2.0	34	3.1
Constable 4	11	0.9	13	1.2
Not Specified	-	-	30	2.8
TOTAL	1159	100.0	1090	100.1

TABLE 8

<u>Years of Service</u>	<u>Number</u>	<u>Percent</u>	
Under 1 Year	17	1.6	
1 to 2	45	4.1	
3 to 5	164	15.0	
6 to 10	311	28.5	76.2
11 to 15	321	29.4	
16 to 20	129	11.8	
Over 20 Years	71	6.5	
Not Specified	<u>32</u>	<u>2.9</u>	
TOTAL	1090	99.8	

TABLE 9

<u>Number of Police Officers Named</u>	<u>Number</u>	<u>Percent</u>
Complaint Withdrawn	129	17.6
1	316	52.1
2	165	27.2
3	54	8.9
4	35	5.8
5	24	4.0
More Than 5	<u>12</u>	<u>2.0</u>
TOTAL	606	100.0

TABLE 10

<u>Division of Occurrence</u>	<u>Number</u>	<u>Percent</u>
11	29	3.9
12	26	3.5
13	26	3.5
14	75	10.2
21	27	3.7
22	24	3.3
23	23	3.1
31	60	8.2
32	48	6.5
33	17	2.3
41	64	8.7
42	31	4.2
43	26	3.5
51	37	5.0
52	111	15.1
53	18	2.4
54	18	2.4
55	53	7.2
1 TR	3	0.4
3 TR	1	0.1
CTU	2	0.3
Other	<u>16</u>	<u>2.2</u>
TOTAL	735	99.7

5. Complaint Process Data

(a) Filing a Complaint

Members of the public can file a complaint about police actions at a number of locations. Most often the complaint is made at a police station (40.3%) or at the Office of the Public Complaints Commissioner (37.4%). Details of the locations where complaints were filed are presented in Table 11 (also see Figure 2). Just over one third (38.6%) of the complaints were filed either the day of the alleged incident or on the next day. The majority of complaints (82.7%) were filed within a month of the occurrence (Table 12).

(b) Complaint Investigation

The vast majority of complaints are investigated by the Public Complaints Investigation Bureau of the police force, which is staffed by senior officers who are charged with the responsibility of investigating complaints against Metropolitan Toronto Police Officers by members of the public. The Public Complaints Commissioner has a responsibility to monitor this initial investigation and, on occasion, to undertake initial investigation of a complaint or to take over an investigation begun by the Public Complaints Investigation Bureau.

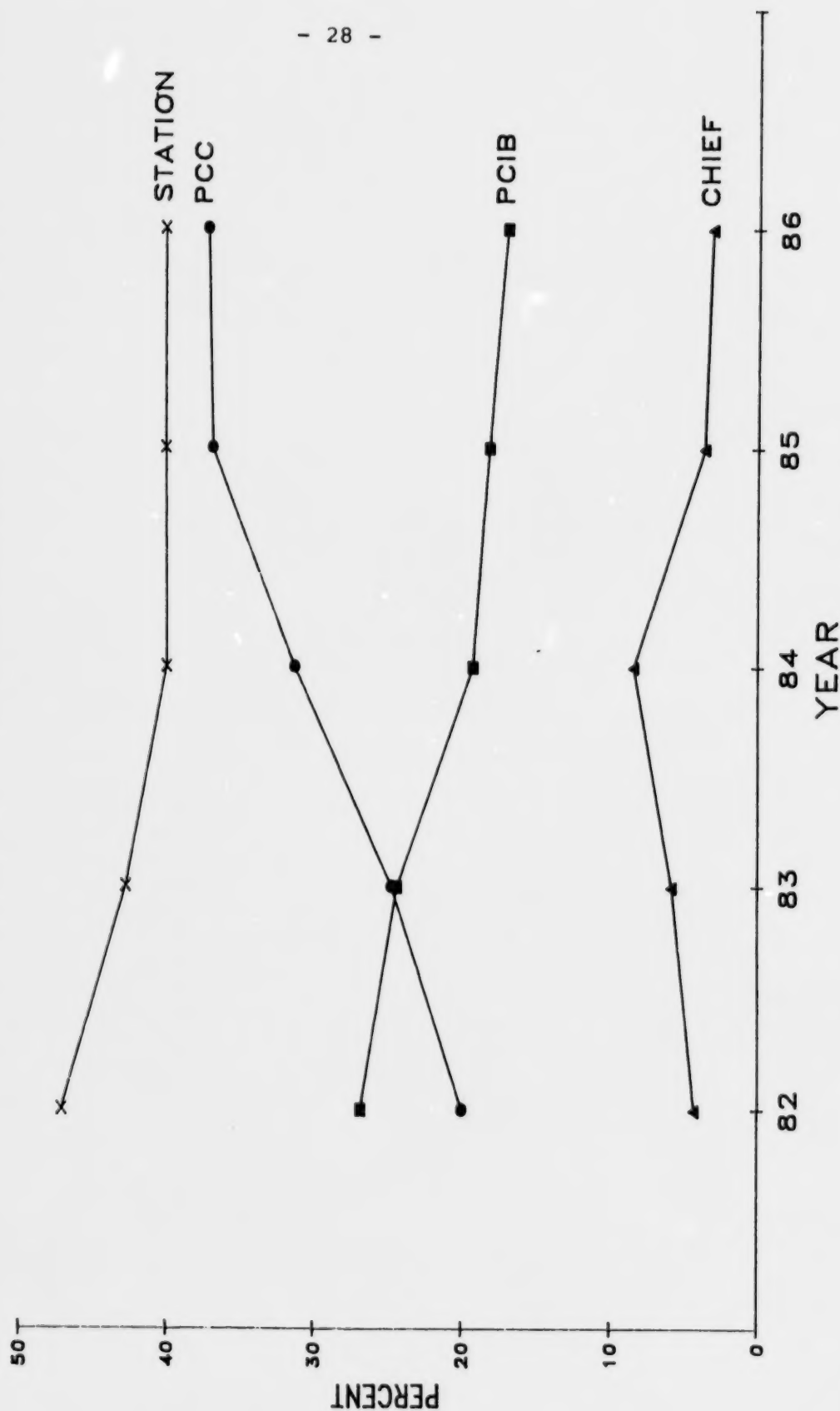
TABLE 11

<u>Location Complaint Filed</u>	<u>Number</u>	<u>Percent</u>
Police Station	296	40.3
Office of the Public Complaints Commissioner	275	37.4
PCIB	125	17.0
Chief of Police	23	3.1
Police Commission	7	1.0
Human Rights Commission	5	0.7
Other	<u>4</u>	<u>0.5</u>
TOTAL	735	100.0

TABLE 12

<u>Days - Occurrence to Filing</u>	<u>Number</u>	<u>Percent</u>
Same Day	183	24.9
Next Day	101	13.7
2 - 31 Days	324	44.1
32 - 60 Days	45	6.1
61 - 90 Days	23	3.1
More Than 90 Days	53	7.2
Unspecified	<u>6</u>	<u>0.8</u>
TOTAL	735	99.9

FIGURE 2
LOCATION WHERE COMPLAINT FILED
PERCENT DISTRIBUTION



ONLY MOST FREQUENT LOCATIONS PLOTTED

The Commissioner receives copies of all complaints and of all investigative reports by the Bureau, and thus is in a position to observe the investigative steps taken. In 76 cases, the P.C.C. made written suggestions to the Bureau regarding the conduct of investigations. The exact details of the concerns are presented in Table 13. The P.C.I.B. complied with 58 (76.3%) of the P.C.C.'s suggestions.

The P.C.C. can conduct initial investigation of a complaint through its civilian staff upon request by the Chief of Police, where there is unreasonable delay or other exceptional circumstances in the conduct of the investigation, or after receipt of the first interim report (which is completed no later than 30 days after the complaint has been filed). The Office of the Public Complaints Commissioner carried out 18 initial investigations in the 1986 year.

Whether an investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, the initial decision as to whether discipline is warranted is made by the Chief of Police after receipt of the final investigative report.

TABLE 13

<u>PCC Concerns</u>	<u>Number</u>	<u>Percent</u>
More Investigation	26	34.2
Expand Report	24	31.6
Taking Too Long	13	17.1
Inform Third Party	5	6.6
Inconsistent Practices	3	4.0
Other	<u>5</u>	<u>6.6</u>
TOTAL	76	100.1

(c) Informal Resolutions

In 37 cases, complaints were resolved informally. A complaint is properly resolved informally if both the complainant and subject officer(s) agree in writing to the resolution. The reasons given for the informal resolution are presented in Table 14. In 15 cases the reason given was that the complainant was content to make the force aware of the incident. A complainant acknowledged possible mistake about the alleged misconduct in one other case. In 4 cases the reason for the resolution was not noted. In one case, the record of the resolution included opposing statements by the officer and the complainant, and a statement that there was no independent evidence to support the complaint. These types of informal resolutions were noted as a matter of considerable concern to the Commissioner in the 1985 Annual Report, since in cases where there is no reason given for a resolution it is impossible to tell whether the complaint was resolved appropriately. The Commissioner has discussed this matter with the police during the 1986 year, and it is notable that the number of informal resolutions without appropriate reasons noted has declined in this reporting year.

In 4 cases, informal resolutions were coupled with disciplinary action. Officers were advised or spoken to by their superiors in 3 cases, and one case resulted in the officer being counselled.

(d) Withdrawals

129 complaints were withdrawn by the complainant. This amounted to 17.6% of all cases closed in the 1986 year. Forty-nine of these withdrawals were attributed to an admission of error on the part of the complainant. The error was usually explained by the complainant having been intoxicated at the time of the incident so that a clear recollection of the events was impossible. In another 30 cases, the reasons for withdrawal were not stated. Legal advice was cited by 12 complainants as the reason for withdrawing their complaints. 10 complainants who withdrew their complaints stated their desire to merely call attention to the incident or put it on record rather than follow through with an investigation. Another 9 withdrew their complaints stating that all their concerns or allegations had been dealt with in court. The remaining 19 cases were withdrawn for miscellaneous reasons.

TABLE 14

<u>Analysis of Informal Resolutions</u>	<u>Number</u>	<u>Percent</u>
Complainant content to make police force aware of complaint	15	40.5
Officer admitted allegation/apologized or explained actions	12	32.4
Parties signed Resolution; no apparent reason for Resolution	4	10.8
Officer advised/spoken to by superiors	3	8.1
Complainant acknowledged possible mistake about alleged misconduct	1	2.7
Officer counselled and/or cautioned	1	2.7
Complainant and officer disagree, no independent evidence	<u>1</u>	<u>2.7</u>
TOTAL INFORMAL RESOLUTIONS	37	99.9

(e) Decision by the Chief of Police

558 complaints (75.9% of files closed in 1986) were investigated without withdrawal or informal resolution by either the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner. Throughout the investigation, investigative reports are sent every 30 days to the complainant, the subject officer and the Office of the Public Complaints Commissioner. When the investigation is completed, the file is presented to the designated Deputy Chief of Police for consideration. The Deputy Chief must then make a finding with respect to the complaint.

In most, (94.3%), of these cases the Deputy Chief concluded that no further action was warranted. In 425 cases, the Deputy stated that there was insufficient evidence to support the complaint. In 59 cases, the Deputy concluded that the evidence supported the officers' version of events. In 40 cases, the Deputy noted that the officer acted according to police procedure. In one case, the officer had resigned by the time the Deputy Chief was to make his decision. In another, the officer's Unit Commander had taken disciplinary action.

In a total of 36 cases, some discipline of the accused officer(s) was imposed by the Deputy Chief. Four of these cases were informally resolved, as noted above, and 32 were formal decisions made after full investigation. Discipline choices available to the Deputy Chief of Police in these circumstances are as follows:

Officer Advised/Spoken To: Without making a judgment whether there was substance to the allegation, a superior officer informally discusses the case with the subject officer and suggests better ways of dealing with the situation.

Counsel: A superior officer acknowledges that there is substance to the allegation, but that the conduct was judged to be unintentional or resulted from inexperience. A counsel is recorded on the police officer's file at headquarters.

Caution: As above for Counsel: In addition, the officer is warned that further misconduct will result in charges pursuant to the Police Act.

Charge Under Police Act: The Chief of Police may charge the officer under the Police Act. In these cases, an internal disciplinary tribunal is convened. Misconduct must be proved beyond a reasonable doubt. Employment penalties such as a demotion can be imposed.

Board of Inquiry: The Chief of Police may refer the case to a public hearing before a civilian board of inquiry, under the Metropolitan Toronto Police Force Complaints Act, 1984. Misconduct must be proved beyond a reasonable doubt and employment penalties may be imposed.

Charge Under Criminal Code: The Chief of Police may cause the subject officers to be charged under the Criminal Code.

Of the 32 cases in which discipline was imposed after full investigation, the Deputy cautioned the officer in three cases, counselled the officer in 13 cases, and imposed

a caution and counsel in one case. In 8 cases, the officer was advised or spoken to. Pursuant to the Deputy Chief's decision to charge officers under the Police Act, 4 Police Act disciplinary trials were completed in the 1986 reporting year. In one of these, the charge against the officer was dismissed. In 3 cases, the officer was found guilty of a disciplinary offence, with 2 cases resulting in a forfeiture of 12 days off and one case resulting in a forfeiture of 5 days off.

In all, 8 criminal charges against police officers were disposed of in the 1986 reporting year. Three charges had been laid by the Chief of Police and 5 by complainants. There was a finding of guilt in one of these cases.

(f) Summary of Disposition of Complaints

On the 735 complaints resolved in the 1986 reporting year the following dispositions took place: (See Figure 3)

WITHDRAWALS - 129 (17.6% of the cases)

INFORMAL RESOLUTIONS - 37 (5% of the cases)

REJECTION OF COMPLAINTS BY CHIEF AS NON-JURISDICTIONAL - 11 (1.5% of the cases)

DECISIONS BY CHIEF - 558 (75.9% of the cases)

The figures for informal resolutions and withdrawals are almost the reverse of the 1985 figures. Withdrawals have increased and informal resolutions have decreased. An analysis was made comparing the type of allegation by the nature of the complaint resolution (Table 15). The major difference was that the complaints which were resolved informally were less likely to involve an allegation of assault. There were no other noteworthy differences.

6. Reviews by the Public Complaints Commissioner

If the complainant is dissatisfied with the decision of the Chief of Police, including a decision that the complaint is frivolous or not within the jurisdiction of the Act, he or she has a right to a review by the Office of the Public Complaints Commissioner.

129 complainant reviews were completed in the 1986 year. In 107 cases, the Commissioner agreed fully or partially with the decision of the Chief. In 81 of these cases, the Chief had decided that there was insufficient evidence for further action; in 9, that the police officer had acted according to police procedure, and in 17 that there was independent evidence to support the officer's version of events. In 5 cases the Commissioner decided that it was not in the public interest to convene a hearing into

the complaint. In 11 cases, the person who had requested a review withdrew the complaint before the review was completed. In one case, the Commissioner arranged an informal resolution of the complaint. In 5 cases, the Commissioner appointed a Board of Inquiry to hold a disciplinary hearing. (A section on Boards of Inquiry is included at the back of this Report).

FIGURE 3
INITIAL DISPOSITION OF COMPLAINTS

COMPLAINTS
N = 735

INFORMAL N = 37	WITHDRAWN N = 129	FORMAL N = 558	SECTION 13 N = 11
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DISCIPLINE
4 INFORMAL 32 FORMAL

NO ACTION = 526

INSUFFICIENT EVIDENCE 425
LAWFUL ACT 40
INDEPENDENT EVIDENCE 59

TABLE 15

COMPLAINT RESOLUTION BY TYPE OF ALLEGATION

Allegation	Informal		Withdrawn		Formal		Section 13		Total	
	N	%	N	%	N	%	N	%	N	%
Assault/ Excessive Force	2	3.7	63	29.2	280	26.0	2	11.1	347	25.4
Threat, Verbal Abuse	25	46.3	68	31.5	315	29.3	8	44.4	416	30.5
Failure to Act According to Police Procedure	24	44.4	79	36.6	448	41.6	7	38.9	558	40.9
Other Misuse of Authority	3	5.6	6	2.8	33	3.1	1	5.5	43	3.3
	54	100	216	100.1	1076	100	18	99.9	1364	100.1
Average Allegations Per Complaint	1.46		1.67		1.93		1.64			

7. Length of Time Taken to Resolve Complaints

The Office of the Public Complaints Commissioner is concerned that thorough investigation and appropriate resolution of police complaints be accomplished as quickly as possible. A careful record was kept of the time it took to resolve each complaint. Considering all complaint files, including those withdrawn and informally resolved, it took 117.77 days, on average, to reach a disposition. A more detailed account of the distribution is presented in Figure 4.

The number of days between the time the complaint was filed and a decision by the Chief of Police averaged 158.6. A representation of the number of days between filing and final investigative report is presented in Table 16.

The number of days between a request for review by the complainant and a decision by the Public Complaints Commissioner averaged 141.6. Table 17 presents the figures for this period.

Reviews often involve time-consuming but unavoidable features such as the necessity of monitoring on-going or pending trials in which relevant evidence might be uncovered, the awaiting of transcripts of trials, unavailable

witnesses, and a need for an analysis of forensic evidence and research into legal issues. Keeping the time for reviews within reasonable limits is an ongoing concern for the Commissioner.

FIGURE 4
TIME INTERVALS BETWEEN EVENTS
(AVERAGE DAYS)

	INFORMAL	WITHDRAWN	FORMAL
INCIDENT	11.2	17.1	12.5
COMPLAINT FILED	78.7	69.7	134.3
FINAL REPORT			24.3
CHIEF'S DECISION			31.0
REVIEW REQUEST			141.6
PCC DECISION			

TABLE 16

<u>No. Of Days: Filing to Final Report</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	23	3.1
31 - 60	89	12.1
61 - 90	121	16.5
91 - 120	144	19.6
121 - 150	105	14.3
151 - 180	87	11.8
181 - 270	119	16.2
271 - 360	29	3.9
More Than 360	11	1.5
Not Specified	<u>7</u>	<u>1.0</u>
TOTAL	735	100.0

TABLE 17

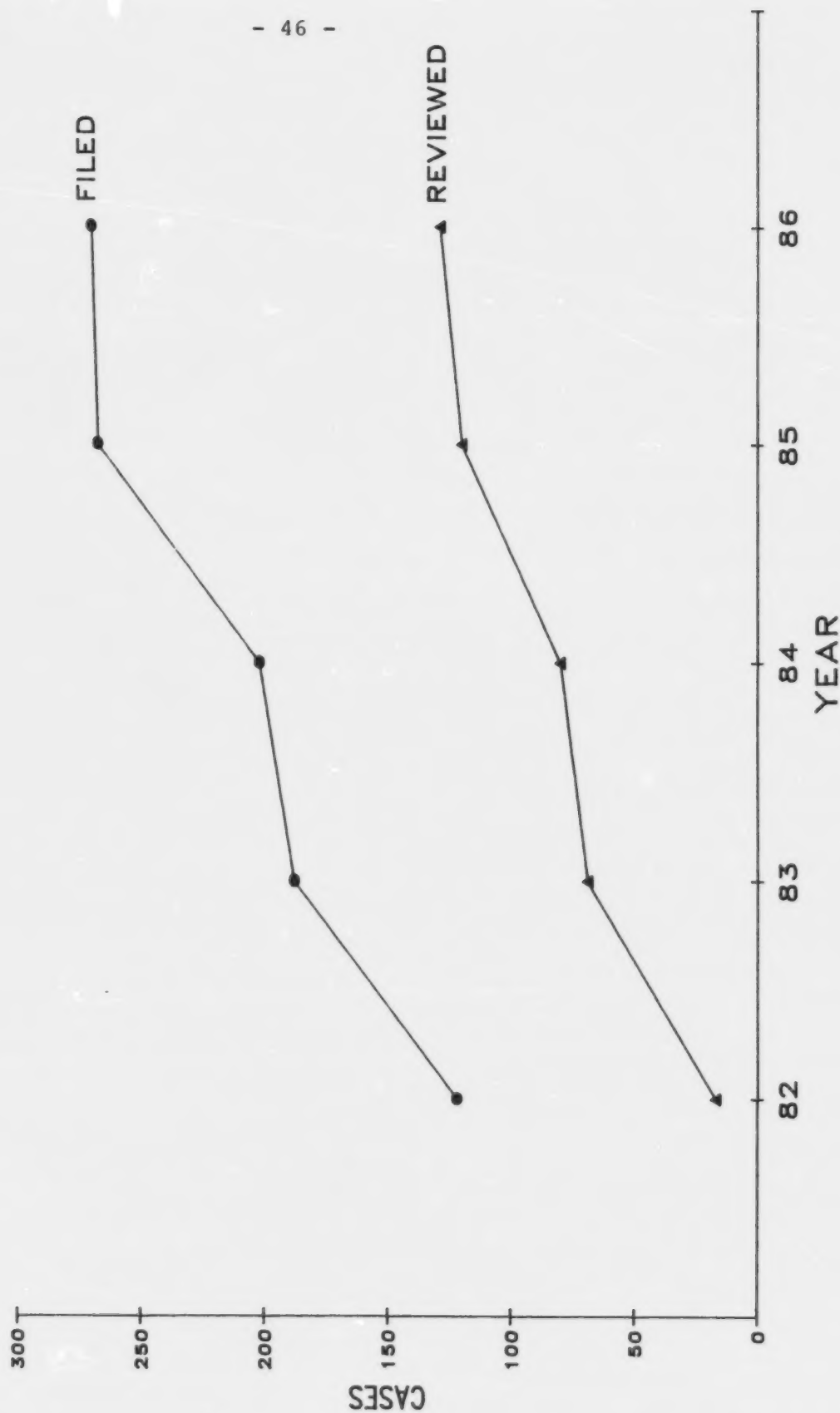
<u>No. of Days: Review Request to PCC Decision</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	1	0.8
31 - 60	9	7.0
61 - 90	16	12.4
91 - 120	21	16.3
121 - 150	21	16.3
151 - 180	18	14.0
181 - 270	31	24.0
271 - 360	9	7.0
More than 360	<u>3</u>	<u>2.3</u>
TOTAL	129	100.1

8. P.C.C. Workload

Data have been collected on the operations of the Office of the Public Commissioner since 1982. Thus, at present there are five years of data available. There are two major points of contact with the public. The first is upon receipt of the original complaint. The second is the reviewing of the police decision.

As was shown earlier, the proportion of complaints which were filed at the P.C.C. has increased steadily. The actual number of complaints filed at the P.C.C. has risen from 122 in 1982 to 275 in 1986. This represents an increase of 125.4%. This increase is presented graphically in Figure 5. Similarly, the requests for reviews have gone up dramatically from 17 in 1982 to 129 in 1986. Clearly, the public demand for the services of the Office of the Public Commissioner has increased substantially since its inception.

FIGURE 5
WORKLOAD INDICATORS
PUBLIC COMPLAINTS COMMISSIONER



C. OTHER CONTACTS WITH THE OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

During the 1986 year, in addition to the 275 formal complaints filed at the Office, there were 642 recorded contacts made with the P.C.C. concerning inquiries which, although they did not develop into complaints, took a substantial amount of time to resolve.

Of these 642 contacts, 80.9% were made by telephone, 10.4% were made by letter, while 8.7% were personal appearances. It is estimated that each of these initial inquiries required approximately thirty minutes of an investigator's time to resolve in addition to any subsequent time spent on follow-up.

Of the 642 people who made inquiries to the Commissioner's Office during this period, 184 or 28.7% were referred by, among others, government agencies, lawyers, or city councillors.

In 60.0% of these contacts, people inquired about specific incidents and wished to know whether or not their complaint fell within the P.C.C.'s jurisdiction. 6.4% of the contacts were requests for information about either the Office or the procedures set out in the legislation.

Another 5.3% made general complaints regarding the police or the justice system; 15.9% requested information about non-police matters while 12.5% requested general information about the police, without having a specific complaint. The majority of these contacts involved some form of follow-up activity; 233 additional telephone calls were made by investigators to aid in the resolution of these inquiries. Further, 114 letters were written for the same purpose and 23 interviews were conducted. In 48 cases, a subsequent follow-up appointment was made. In 15 of these cases, the person inquiring attended the follow-up interview, while in 33 cases they did not.

Thirty-nine of the contacts were made by people who wanted to lodge a complaint about a police officer on a police force other than the Metro Toronto Police Force. These complaints were not within the P.C.C.'s jurisdiction and were referred to the proper agencies.

In addition, various people were referred to the Metropolitan Toronto Police Force, the Law Society, Municipal police authorities, Chiefs of Police in other jurisdictions, the Ministry of the Attorney General, various other ministries and the Ombudsman.

PART III
Other Significant Activities

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC

In the 1986 year, the Public Complaints Commissioner continued regular appearances at the C.O. Bick Police College for training sessions on the complaints legislation and its implications both for constables and for supervisory police officers. The Commissioner found these education sessions particularly useful in that they allowed for dialogue with members of the police force.

Public education activities and consultation with the public were continued with a view to improving the service offered.

In the summer and autumn of 1986, the Commissioner conducted a number of meetings with a wide variety of individuals, community groups and social service agencies to assess the needs within the community as they relate to the police complaints system. In the course of this activity it was frequently brought to the attention of the Commissioner that, despite efforts to make the public aware of the existence of the system, there are still significant numbers of people who are only vaguely aware that a system is in

place and have little idea of how to obtain access to it. Community groups in particular felt that the best approach was personal, but that advertising in local media was essential.

Pursuant to these suggestions, the Commissioner made a commitment to send investigators to areas of the city that are far from the central core of Toronto where the Office is located, and to make these investigators available once a week for several hours in the evening. Arrangements were made for the investigator in each area to obtain permission to use space in the existing community facility, such as a school. Two investigators were in place in two different areas of the city on one evening a week each by early 1987, with a plan to evaluate this outreach effort after six months.

The question of publicizing the complaints system was a problematic one. There is no doubt that a simply-worded advertisement does bring the existence of a service to community attention in a fairly efficient way. On the other hand, the advertising of a police complaint service could clearly be offensive to the police force, as well as to some members of the community who might consider that such action would damage police morale. In the initial stages of

the outreach experiment, the Commissioner attempted to rely on word of mouth, sending staff to explain the system and the outreach effort to various agencies within each community. However, by the early part of 1987, the Commissioner decided that, as with other services under the Ministry of the Attorney General, the Office of the Public Complaints Commissioner would do well to try the route of informational advertising. The advertisement was inserted in some 175 community weekly newspapers in 47 different languages.

B. ONGOING CONSULTATION WITH THE POLICE FORCE AND THE BOARD OF COMMISSIONERS OF POLICE

Complaints against the police by the public are of serious concern to police management at all levels. In this regard, the Commissioner spends a considerable amount of time in discussion with the Chief of Police, senior staff of the police force, the head of the Public Complaints Investigation Bureau and members of the Board of Commissioners of Police.

C. RECOMMENDATIONS TO THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE

The Metropolitan Toronto Police Force Complaints Act, 1984 gives the Commissioner the power to make formal recommendations directed towards the prevention of situations in which complaints might arise. Section 21 of the Act provides that the Commissioner may make recommendations to the Metropolitan Toronto Board of Commissioners of Police when the Commissioner is of the opinion that a police practice or procedure, or a law affecting the resolution or prevention of public complaints, should be altered or implemented. The Board of Commissioners of Police must respond in writing to such recommendations, within 90 days, to the Attorney General, the Solicitor General, and the Commissioner.

The following are examples of recommendations in which a response was received from the Metropolitan Toronto Board of Commissioners of Police in the 1986 year.

1. Prisoner Transport Vehicles

This recommendation arose because of three complaints filed with the office of the Commissioner. In the first complaint, someone who was being transported with other prisoners from a detention center to a court was assaulted and injured by the other occupants of the patrol wagon. After investigation by the police, four men were charged with assaulting the complainant. In the second complaint, which arose in similar circumstances, the complainant was also assaulted by other prisoners. These other prisoners were charged criminally as well. In the third complaint, a prisoner being transported fell to the floor of the vehicle and was injured when the driver of the vehicle braked suddenly.

The Commissioner concluded that no action was warranted against the police officers involved in these cases but, during the course of dealing with the complaints, a study was made of the safety features of the vehicles in use at the time by the Metropolitan Toronto Police Force. The Commissioner also obtained information about the safety features included in vehicles used by other police forces. It was noted that the design of Metropolitan Toronto police vehicles used for transporting of prisoners did not include

any means of restraint nor any design features to enable an occupant to restrain himself. In addition, the Commissioner was concerned that the vehicles did not permit adequate supervision of occupants by an accompanying police officer to prevent the prisoners from attacking and injuring each other.

Pursuant to Section 21 of the Metropolitan Toronto Police Force Complaints Act, the Commissioner recommended the following:

1. That all present vehicles used for the transportation of prisoners (except patrol cars) be modified to include the installation of molded, formed seats, together with stainless steel floor-to-ceiling poles at intervals.
2. That all present vehicles used for the transportation of prisoners (except patrol cars) be modified to include a properly protected observation window not less than 36" by 36" to enable both the driver and the escort a clear, unobstructed view of the interior of the wagon at all times.
3. That future vehicles purchased for the purpose of transporting prisoners should be designed to include features that would enable an escorting officer safely to remain in the rear of the vehicle to supervise the prisoners being transported.

Following the submission of the recommendations, a lengthy consultation took place between members of the Commissioner's staff and members of the police force. Vehicles in use by other police forces were examined.

In response to the recommendations, the Chief demonstrated to the Commissioner a new design of prisoner transport vehicle and planned alterations to existing vehicles. The alterations to the vehicles included the installation of a bulkhead inside the prisoner area of the wagon. The bottom half of the bulkhead is solid and the top half is screen mesh covered with plexi-glass. The new front compartment constitutes approximately one-quarter of the usable space and can hold four prisoners. The rear compartment has approximately three-quarters of the usable space and holds eight prisoners. This allows the transporting officers to separate prisoners. Extra lighting was installed in the wagons to improve transporting officers' view of the prisoners and to reduce the likelihood of assault.

The Board of Commissioners objected to the use of floor-to-ceiling stainless steel poles, stating that the wagons are too small to accommodate them. The Board of Commissioners also felt that the poles could cause more injuries than they might prevent. The Board of Commissioners also expressed objections to the idea of molded plastic seats, citing the experience of another police force, which found that prisoners deposited

contraband in the cracks between the seats. The Commissioners suggested that the molded seats would not fit everyone nor would they necessarily fit properly into all of the wagons used by the force. The Commissioners noted that when only one or two prisoners were being transported, they could be placed in the new front compartment in which the benches face forward and the prisoners are able to put their feet against the front bulkhead for support.

In responding to recommendation #2, the Board of Commissioners noted that they have enlarged the viewing hatch in police vans to 20 3/4 inches square. In addition, they have improved the lighting within the vans.

In responding to recommendation #3, the Board of Commissioners decided that a van which provided for an escorting officer in the rear of the vehicle would be too large. In addition, the Board noted that the new two-compartment configuration of prisoner transport wagons would enable a better separation of prisoners for a safer transportation.

All existing vans are being altered to conform to the new specifications, and all new vans will be built to these standards.

2. Officers' Confidential Instructions to Crown Counsel

This case arose out of a complaint filed when police officers, called to a residence in which an assault had taken place, mistakenly charged the victim of the assault (who was sitting on the assailant in order to control her) rather than the assailant. This problem was compounded when in the course of writing confidential remarks to the Crown counsel who would be prosecuting the assault charge, a sergeant indicated that the person charged (later the complainant) had a mental and alcoholic problem. In fact, there was no evidence that the complainant had such problems.

After conducting a review of the complaint, the Public Complaints Commissioner concluded that the arresting officers' behavior, in all the circumstances, did not amount to misconduct, although he notified the arresting officers of his views that they should have conducted further inquiries before charging the complainant. In the matter of the confidential instructions to the Crown, the Commissioner was particularly concerned because these comments often influence the Crown, who must rely on them in the absence of first-hand evidence, in his or her prosecution of the case.

The Commissioner reviewed the administrative procedures governing the drafting of these confidential comments, and concluded that the matter of ensuring that officers' statements were well-founded should be addressed in the police force's guidelines.

Pursuant to Section 21 of the Metropolitan Toronto Police Force Complaints Act, 1984, the Commissioner made the following recommendation:

That the administrative procedures of the Metropolitan Toronto Police Force be amended, and that written material be developed for C.O. Bick Police College, to instruct officers as to the type of information that should be included in confidential instructions to the Crown.

In cases in which the personal circumstances, character, or state of health of the accused is relevant, police officers should:

- confine their remarks about the accused's behavior to a description of the behavior which they have personally observed rather than their subjective impressions of that behavior, and /or
- ensure that information received about personal circumstances, character, or state of health of the accused, and included in the confidential instructions from the Crown, is from a reliable and identifiable source.

The Commissioner recommended that a standing order be issued in respect of this recommendation.

In responding to this recommendation, the Board of Commissioners of Police indicated that the recommendations would be incorporated into both police force directives and written training materials.

3. Questioning of Young Offenders

This case arose out of a complaint by a mother regarding police treatment of her 13 year old son. The boy had been taken to a police station due to an allegation that he had defaced public property by writing graffiti on the walls of the school. The boy stated that he was harassed and mistreated by the arresting officers during questioning. His mother stated that she was telephoned by the police and told that her son was in custody and that she told them she would come to the station from her place of employment. It took her approximately one hour to get to the station, and when she arrived her son was released to her without charges, the investigating officer having decided that there was insufficient evidence of the alleged mischief.

On review of the case, the Commissioner decided that there was insufficient evidence to warrant a public inquiry on the allegations of harassment and abuse. However, the Commissioner noted that the procedures suggested by the Young Offenders Act in questioning a child under the age of 18 had not been followed by the investigating officer. The Young Offenders Act provides that a statement taken from a young person would not be admissible in a later court proceeding against that person unless the young person received an explanation that he or she is under no obligation to give a statement, that any statement may be used in evidence, that he or she may consult a lawyer, a parent, an adult relative or any other appropriate adult chosen by the young person and that the young person has a right to make his or her statement in the presence of the parent, lawyer or relative.

The Commissioner reviewed existing administrative procedures governing the questioning of young offenders by Metro police officers. He was informed that a new administrative procedure was being drafted and he made the following recommendation:

"That the Metropolitan Toronto Police Force ensure that they have an administrative procedure governing the questioning of children and young persons that includes a provision that a child or young person, suspected or accused of committing a criminal offence, should not be questioned or asked to make a statement about such offence, until all of the provisions of the Young Offenders Act are complied with".

The Board of Commissioners of Police amended the administrative procedure as recommended by the Commissioner to ensure that the requirements of the Young Offenders Act were addressed in the procedure.

D. PARTICIPATION IN POLICE/COMMUNITY DIALOGUE

Part of the mandate of the Office of the Public Complaints Commissioner is to try to prevent, or prevent the escalation of, situations of misunderstanding or hostility between the police and community. In the furtherance of this objective, P.C.C. staff have helped to initiate and have participated in on-going formal police/community dialogue. Some of this dialogue has been on an ad hoc, short-term basis, and at a neighborhood level. Some has involved more formal police/community communication throughout the year. The examples below represent intervention affecting local neighborhoods, Metropolitan Toronto and adjoining regions.

1. Community-Centred Complaint Situations

On occasion, difficulties arise between the police and segments of various communities. Policing a large urban area involves responding to continually changing needs and priorities. Requests for changes in policing services to reflect specific needs are often made by groups with special interests, or individuals resident in a particular neighbourhood, if they feel that officers assigned to their area are not meeting all of their policing needs. Recent examples which have been highlighted in the media include neighbourhoods concerned about prostitution, speeding cars in areas with a large population of children, and women concerned with incidents of violence specifically directed against women. If a group is articulate and well-organized, there is usually little difficulty in presenting a case to the police force, and negotiations usually result in some acceptable compromise.

The situation is different when residents of a neighbourhood are not used to making formal approaches to agencies which affect their lives, or not cohesive as a group. When residents of an area have low incomes, differ widely in age, or are composed of different racial and

ethnic groups who do not understand or accept each other particularly well, it is difficult to organize and to make the approaches necessary to effect needed change. In these situations, difficulties between police and community can develop into long-standing problems. Typically in such situations, there are people who have specific complaints against the police, but may be unwilling to make a formal complaint because of unfamiliarity with or distrust of legal systems. There are also people who have no specific complaint, but are concerned about police/community relations in the neighborhood. Often there are extreme differences in opinion as to the quality of police service, the nature of any problems and what steps ought to be undertaken.

On a number of occasions, the Office of the Public Complaints Commissioner has attempted to assist in these situations. It is the firm belief of the Commissioner that whether or not people are willing to make formal complaints, the existence of complaints that are not responded to is an unhealthy situation, leading to the buildup of resentment, hostility and alienation between police and a part of the community. Such dissatisfaction can only be alleviated by the establishment of realistic communication between the police and the affected community.

Establishing the required communication can be difficult. As noted above, the community may be in conflict among itself as well as with police and other social services. Further, people are frequently distrustful of government agencies and suspicious of the intentions and degree of commitment of outsiders. Finally, appropriate dialogue between police and community often cannot be achieved without significant organization, hard work and commitment among members of the community. This challenge is particularly difficult when people are already feeling alienated, and have had little or no experience of effecting a significant change in the institutions that affect their lives.

In approaching these situations, the Office of the Public Complaints Commissioner does not attempt to undertake the community organization role, which is not part of its mandate. Rather, the Office works in cooperation with more widely-mandated agencies, such as those of the various cities of Metropolitan Toronto and the provincial government. In addition, the Office tries to establish communication with recognized community leaders who may be interested in effecting changes. These cooperative efforts have usually succeeded in establishing a forum whereby police/community dialogue can take place.

Two such situations came to the attention of the Office of the Public Complaints Commissioner in the 1986 year. In both situations, involvement is still going on.

(a) Birchmount-Finch Community

During the summer of 1986, a series of confrontations between police and youth in a small northerly area of the city had serious implications for the safety of both police and residents. The Metropolitan Toronto Housing Authority, which is responsible for most of the housing in the area, called for a meeting of local agencies serving the area, the Office of the Public Complaints Commissioner, the Race Relations Division of the Ontario Human Rights Commission and the Multicultural and Race Relations Division of the Municipality of Metropolitan Toronto. Representatives of these agencies met with residents to try to ascertain the underlying causes of the conflict.

It appeared that a major source of conflict arose from altercations between police and youth in the course of police enforcing municipal bylaws against noise and the Trespass to Property Act. This in turn arose from the fact

that large groups of youth would congregate in the relatively small recreation area near residential buildings. The youth had very little else to do, as unemployment is high in the area and there were very few recreational programs. Difficulty between the police and the community was compounded due to reassignments among the foot patrol officers in the area, which resulted in the presence of officers who were not as familiar with the community as previous officers had been. In addition, there had been changes in the personnel of building security staff, and the formerly on-site Housing Authority property manager, maintenance supervisor and community relations worker had been relocated. All of these changes meant that residents did not have easy access to persons who could deal with day-to-day problems before they became more complicated.

The Multicultural and Race Relations Division of Metropolitan Toronto, Scarborough Youth Services and the Metropolitan Toronto Housing Authority jointly offered services to help the community organize in order to deal with existing problems. The Office of the Public Complaints Commissioner, in cooperation with senior police officers of the local Division, members of the community and representatives of agencies involved in the area, assisted

in establishing formal communication between the police and the community. In addition, Metro Housing arranged to reestablish a full-time community relations worker in the area, and some of the foot patrol officers who had been familiar with and well accepted by the community were reassigned to the area.

By the end of the year, there was some organized effort directed toward community self-help, and somewhat better communication between the police and certain influential members of the community. Work on identified problems is continuing.

(b) Lawrence Heights

In September of 1986, in the course of normal outreach activities, the Office of the Public Complaints Commissioner was given information about complaints concerning policing in Lawrence Heights, another small community in the north end of the city. As with the Birchmount Finch situation, there were allegations of police harassment in the form of unwarranted stops and searches, allegations of racism, and general concern about relations between the police and young people in the area. The Commissioner decided that outreach services by the office in the area would be appropriate, and

discussions with local school and community service agencies commenced in October. Shortly thereafter, there was a well-publicized expression of community concern in relation to the activities of the police in making several arrests of young people in connection with a series of robberies that had taken place in the neighborhood. Once again there were allegations of improper search and seizure, arrest without warrant, racist slurs, discourtesy to parents of suspects and mistreatment of suspects. One group within the community threatened to sue the police force in respect of these incidents.

The Public Complaints Commissioner was invited to a public meeting in the neighbourhood to explain the use of the complaints system. Few formal complaints resulted, as members of the community expressed a certain amount of distrust with the system, as indeed with most official channels. However, it seemed to the Commissioner that it was imperative that the community establish a dialogue with the police in order to address concerns of both the police and the community. The Public Complaints Commissioner, the Race Relations Commissioner, the Director of the Metro Toronto Multicultural and Race Relations Division and Metro Housing's Director of Race Relations Policies and Programs met in order to arrange that the community be assisted in

organizing itself to this end. With cooperation from leaders within the community and the Staff Inspector of the local Division, police/community dialogue had commenced by May, 1987.

2. Regent Park Advisory Committee on
Police/Community Relations

As noted in the 1985 Report, this Committee was formed to address policing concerns in a small but populous area of the city which had been the subject of a report to the Board of Commissioners of Police by this office in 1984. The Advisory Committee, composed of Regent Park residents, professionals working within the community, the police Division Commander for the area, Community Relations police officers, and a representative of the Metropolitan Toronto Board of Commissioners of Police, continued to function in 1986. Toward the end of 1986 the Committee undertook to make special efforts to increase community representation and to broaden its area of concern.

3. Metro Toronto Council on Race Relations and
Policing

The Council on Race Relations and Policing is an independent voluntary association concerned with race relations and policing in Metropolitan Toronto. The

Council's membership includes members of the Metro Toronto Police Force, municipal government officials, representation from various federal and provincial institutions concerned with policing and interested individuals within the community. The Office of the Public Complaints Commissioner has been represented on the Council since 1982, and is an active participant in subcommittee work.

During 1986, the Council continued to work on its two current projects, the creation of a videotape to educate the community on the law relating to the phenomenon of young persons hanging out in public places, and a study of cross-cultural training done by the Metropolitan Toronto Police Force, for the purpose of making recommendations for the improvement of this training.

4. The Greater Toronto Region Working Group on Policing in Multicultural, Multiracial Urban Communities

The Greater Toronto Region Working Group was formed in 1984 to address policing issues arising out of the increasing plurality of our society. The Working Group is composed of representatives from the police forces of Durham Region, Halton Region, Metropolitan Toronto, Peel Region and York Region, as well as representatives of various

committees and levels of government, and people with expertise in the areas of race and ethnic relations and cross-cultural communication. The purpose of the Working Group is to develop detailed plans for specific actions by police and community to achieve the goals of more representative police forces, enhanced cross-cultural training for police officers, improved citizen complaints procedures, and improvement and coordination of police community liaison activities. The Office of the Public Complaints Commissioner has been represented among the members of the Working Group since its inception.

During 1986, the Working Group released a detailed report on recruitment and hiring practices among police forces, with recommendations for changes where necessary. The report was formally presented in June of 1986, and has received widespread acceptance from the Canadian Association of Chiefs of Police and from various police forces who have received it.

During 1986 the Working Group has commenced two projects, a report of cross-cultural training for police officers, and a report on the improvement and coordination of police/community liaison activities.

PART IV
Boards of Inquiry

PART IV - BOARDS OF INQUIRY

A. INTRODUCTION

Both the Public Complaints Commissioner and the Chief of Police can decide to send a complaint to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984, if they consider that a public hearing is warranted. In addition, any police officer who wishes to appeal from an adverse decision of an internal police disciplinary tribunal arising from a public complaint can appeal to a Board of Inquiry under the complaints legislation.

The individuals who form Boards of Inquiry to hear and decide upon complaints are taken from a panel appointed by the Lieutenant Governor in Council. One-third of the members of this panel are recommended for appointment jointly by the Attorney General and the Solicitor General; one-third of the members are recommended for appointment by Metro Council and the remaining one-third are recommended jointly by the Metropolitan Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association. The Attorney General/Solicitor General appointees must be members of the Law Society of Upper Canada. These lawyers chair each Board hearing.

A Board of Inquiry in respect of an allegation of serious misconduct is heard by three people, one from each group of appointees. A Board of Inquiry involving an allegation of minor misconduct is heard by one person, an appointee of the Solicitor General and Attorney General.

Hearings are held in public and are similar to other administrative or quasi-judicial proceedings. The Statutory Powers Procedure Act and the rules of natural justice apply.

B. BOARD OF INQUIRY DECISIONS, 1986

Between December 21, 1985 and December 20, 1986, seven Boards of Inquiry were called by the Public Complaints Commissioner. One of these Boards of Inquiry was completed during the year.

The following is a summary of six Board of Inquiry decisions delivered during the 1986 reporting year. Two of these decisions are the result of Boards of Inquiry called in 1984, three were called in 1985 and one was called and completed in 1986. Following the Board of Inquiry decisions is the report of one appeal of a Board decision dealt with by the Divisional Court of Ontario in the 1986 year.

Re Hodgson (Officer) and Skinner (Complainant)
January 23, 1986 (Panel: Sigurdson, Crothers,
Cole). Hearing called by Commissioner.

Complainant alleged an assault while being detained in a police car. The Board found that injuries did, in fact, occur to the complainant in the police car. However, it was not satisfied beyond a reasonable doubt that excessive force was used by the subject officer. The complaint was dismissed.

Re Murdock (Officer) and Smith (Complainant)
February 12, 1986 (Panel: Grosman, Popo
McLennon). Hearing called by the Commissioner.

Complainant alleged that he was assaulted at a police station. Complainant, his wife, and a friend, were driving when stopped by a police officer. All occupants of the car were requested to accompany the officer to the station in his cruiser. At the station, complainant was requested to blow into a breathalyzer machine. He was requested to blow a second time and he refused to do so. Complainant alleged that officer struck him on the side of the head and proceeded to kick him while he was lying face down on the floor. Officer alleged that complainant was verbally abusive and uncooperative while in the breathalyzer room.

He stated that the complainant repeatedly sought to get out of a chair in which he was sitting and leave the room. On the third occasion he grabbed the complainant by the shirt in an attempt to walk him backwards towards the chair that he had just left. Officer claimed that the complainant attempted to knee him in the groin. In seeking to avoid the kick he pushed the complainant into the chair and landed on top of him. Medical evidence established that complainant suffered two broken ribs, as well as a bruise to the right temple.

The Board was critical of the police investigation, and of some of the evidence of some of the officers who testified.

The Board rejected the evidence of the complainant as to the cause of the injuries. However it found that the subject officer had reacted violently and used excessive force in throwing the complainant into the chair. It rejected the evidence of the subject officer that the complainant had attempted to knee him. The assault consisted of the officer throwing the complainant into the chair.

The Board found that the complainant acted provocatively in verbally abusing the subject officer; it found that the subject officer did not intend in a planned and deliberate manner to cause injuries to the complainant. The officer lost his temper and acted with recklessness. However, the injuries were severe. The officer had a good employment record and he and his family had had this matter hanging over their heads for two years. In light of these considerations, the Board imposed a penalty of five days pay forfeited, and an additional five days off forfeited.

The officer has appealed his case to the Divisional Court.

Re Clark (Officer) and Sausik (Complainant)
March 24, 1986 (Panel: Makuch, Rumball, Cole).
Hearing called by the Commissioner.

Complainant alleged discreditable conduct on the part of the subject officer in that he wilfully or negligently made false, misleading or inaccurate statements while giving evidence in Provincial Offences Court. At issue was whether the complainant had been speeding. On the evidence, the Board found as a fact that the subject officer was not in a position to view the complainant's automobile at the relevant time, and that he did not know the speed of the

complainant's car. In view of this, the subject officer's testimony in Provincial Offences Court was misleading.

The Board referred to mitigating factors, and found no need for specific deterrence in view of the subject officer's excellent employment record. The Board granted an adjournment sine die on the penalty.

The Attorney General has appealed the penalty decision to the Divisional Court.

Re Hamilton & Gregoire (Officers) and Green (Complainant) June 10, 1986 (Panel: Makuch, Clements, Santos). Hearing called by the Commissioner.

At the beginning of the hearing, counsel for the officers contended that the legislation establishing the Board of Inquiry was in breach of section 15 of the Charter of Rights and Freedoms. The foundation for this argument was that the legislation subjected officers in Metropolitan Toronto to a greater degree of scrutiny than officers in other jurisdictions. The Board rejected this argument as untenable -- it found that equal protection under the Charter, particularly given the provisions of section 1, does not mean that everyone has to be treated exactly the same.

Complainant claimed that he was assaulted at the scene of his arrest and at the police station. Complainant claimed that he was kicked in the face by one of the officers, that he was severely beaten, and that his ear was gashed and ripped. The Board found that none of the medical evidence supported these allegations. On this basis, the Board rejected the contention that the officers used excessive force in arresting the complainant. The Board found that the officers used only as much force as was necessary to arrest the complainant and to search him at the police station. The complaint was dismissed.

Re Cooper (Officer) and Gojdos (Complainant)
August 19, 1986 (Panel: Barrett, Westaway,
Jorgensen). Hearing called by the Commissioner.

Complainant alleged an assault in the parking lot of a police station. Complainant had formed part of a crowd which watched two officers trying to arrest two people. He shouted at the officers, using some coarse language. He left the scene but was arrested a short time later on a charge of obstructing police. He was handcuffed, placed in a cruiser and taken to the police station with three officers.

Complainant stated that on arrival at the police station one officer kicked and punched him repeatedly and pushed him into the door of the police cruiser, causing a cut under his eye.

Officer stated that he removed the handcuffs from the complainant in the parking lot because complainant had said they were too tight. At this point, complainant turned and swung at the officer. A struggle ensued, the complainant fell down and the officer held him, and then escorted him to the station. Two other officers denied seeing anything of the incident, as they were sitting in the front of the cruiser making notes and talking.

The Board found that the complainant had minimized his involvement in the initial incident and had exaggerated the actual number of blows received, but that generally he was a credible witness. They concluded that the complainant had been assaulted as alleged. They noted that they felt it was implausible that an officer who felt it necessary to handcuff a prisoner would take off the handcuffs in the parking lot, when the police station booking office was a short distance away. The Board also noted medical evidence and photographs of injuries more consistent with facts as alleged by the complainant than with the explanation given

by the officers. The officer was found guilty of misconduct.

In imposing a penalty, the Board took into account the officer's good employment record and the stressful nature of police work in general. It also pointed out that, while there had been some provocation from the complainant, the assault took place sometime later, when the officer had time to "cool off." In addition, the assault caused injury and took place while the complainant was handcuffed. The officer was given an 8-day suspension.

The officer has appealed the decision to the Divisional Court.

Re Earl (Officer) and Zwirko (Complainant)
October 30, 1986 (Panel: Barrett, Clements
Cole). Hearing called by the Commissioner.

The Board was faced with preliminary objection to its jurisdiction raised by counsel for the subject officer. Counsel for the subject officer argued that the proceedings before the Board gave rise to an appearance of bias and thus offended section 7 and section 11(d) of the Charter of Rights and Freedoms. In addition, the proceedings conducted by the Board violated section 15(1) of the Charter and

section 11(b) of the Charter, and the Board of Inquiry was exceeding its statutory jurisdiction by attempting to adjudicate a matter which is essentially criminal in nature. Relying on the decision of the Ontario Court of Appeal in Re Trumbley and Pugh, the Board rejected arguments that section 11 of the Charter applied to police disciplinary proceedings. On the basis of this reasoning it also concluded that the proceedings were not essentially criminal in nature. The Board considered the adjudicative structure of the Act and found that it did not give rise to a reasonable apprehension of bias and thus felt it unnecessary to consider section 7 arguments. As to the section 15 argument, the Board concluded that it was not within its jurisdiction to declare its governing legislation invalid. It found that it was not a court of competent jurisdiction within the meaning of section 24(2) of the Charter.

Complainant alleged that he was assaulted by the subject officer on two occasions; first, while in the garage of a police station following arrest, and then outside a hospital to which he was taken because he complained of injuries.

Complainant was arrested for stealing a green pepper from a fruit market and then assaulting the owner. Although convicted of the assault, he maintained at the hearing that no assault took place and that the incident had been resolved peacefully and that he was walking away when stopped by the police. He was placed in the rear of the police car, at which point he smashed and broke open a briefcase belonging to the subject officer's partner. Otherwise, he claimed he was cooperative with the police. He was driven to the police station and claimed that in the garage he was beaten, kicked and punched by some police officers. He was unable to identify any particular officer as assaulting him at the station because he drifted in and out of consciousness during and after the assault. He recalled that on being walked into the Emergency Department of the hospital by the subject officer and his partner, he was pushed and shoved. He claimed that he decided to resist by pushing off the police officers. He stated that both officers retaliated by assaulting him with their fists, their boots and their batons. He had very little recollection of events subsequent to the assault, because again he lapsed in and out of consciousness.

The subject officer's partner was also the subject of the complaint by Mr. Zwirko regarding this incident, but by the time the Public Complaints Commissioner had ordered a hearing into this matter, this officer had left the Metropolitan Toronto Police Force and had joined another police force. The subject officer's partner took full responsibility for all of the injuries sustained by the complainant and stated that he acted in self-defence throughout. He maintained that the complainant attacked him in the garage of the police station and that he retaliated. He stated that the subject officer did not become involved in this fight at all, except to finally assist by pinning the complainant down to the floor and handcuffing him. As to events outside the hospital, the subject officer's partner maintained that this was a fight between himself and the complainant alone.

The subject officer did not give evidence.

Two witnesses were present during the incident outside the hospital, and one noted that the complainant was punched between seven and ten times in the face, while not resisting. The other witness did not actually see any blows being struck.

The Board found that the evidence was clear that the complainant sustained several injuries while in police custody. These included three fractured ribs which caused a partial collapse of one lung, a deep laceration to his rectal area, a cut lip and multiple bruises. It was unable to determine with certainty the cause of these injuries. The Board took note of the fact that the complainant had a very hazy recollection of the events; in addition, it noted that he minimized his involvement in the assault which preceded the arrest, and the fact that he had a history of assaultive behaviour.

The Board also had some difficulty in accepting in full the evidence of the subject officer's partner. His evidence contradicted in part his version of events as detailed in his Use of Force Report. Further, the Board found it incredible that he would not have reported such a serious incident to his Staff Sergeant. The Board also found incredible that neither the Staff Sergeant nor his assistant, the Duty Officer, noticed anything remarkable about the officer's appearance.

In regard to the incident outside the hospital, the Board found both civilian witnesses to be credible. However, the Board was unable to determine with certainty

that the subject officer had been the officer who was seen assaulting the complainant.

The Board found that the complainant was on the receiving end of a great deal of force while in police custody but it could not on the evidence determine, beyond a reasonable doubt, whether or not the force was excessive in the circumstances or which police officer or officers caused it. The complaint was dismissed.

C. APPEAL OF BOARD OF INQUIRY DECISION, 1986

Between December 21, 1985 and December 20, 1986, one appeal of a decision of a Board of Inquiry was decided by the Divisional Court of Ontario. The case under appeal was Re: Brown and Smollett (officers) and Nguyen (complainant), which had been decided by a Board of Inquiry in 1984. The complainant had alleged assault at a police station. The officers appealed to the Divisional Court of Ontario. On October 14, 1986, the Ontario Divisional Court dismissed the officers' appeal, stating that there was evidence to support the findings of the Board and that the Board had committed no error in its analysis of the evidence.

APPENDICES



APPENDIX A



Government
of Ontario

Metropolitan Toronto Police Force Complaints Act, 1984

Statutes of Ontario, 1984
Chapter 63

as amended by
1986, Chapter 31

and

Ontario Regulation 494/85

CHAPTER 63

Metropolitan Toronto Police Force Complaints Act, 1984

1. In this Act,

Interpretation

- (a) "Bureau" means the Public Complaints Investigation Bureau;
- (b) "chief of police" means the chief of police of the Metropolitan Police Force;
- (c) "Commissioner" means the Public Complaints Commissioner appointed under this Act;
- (d) "complainant" means a member of the public who makes a complaint in accordance with the provisions of this Act;
- (e) "complaint" means an allegation or allegations, made orally or in writing, by a member of the public, concerning the misconduct of a police officer;
- (f) "inquiry" means an allegation or allegations concerning conduct of a police officer that does not amount to "misconduct";
- (g) "misconduct" means an act or omission on the part of a police officer that constitutes an offence under the Code of Offences set out in the Schedule to Regulation 791 of Revised Regulations of Ontario, 1980, made under the *Police Act*;
- (h) "officer in charge" means the police officer who at any particular time, while on duty, is in charge of and responsible for, the proper functioning of a police facility;
- (i) "police officer" means a police officer on the Metropolitan Police Force;
- (j) "prescribed" means prescribed by the regulations;

R.S.O. 1980,
c. 381

(k) "regulations" means the regulations made under this Act;

(l) "subject officer" means a police officer who is the subject of a complaint. 1984, c. 63, s. 1.

Application
of Act

R.S.O. 1980,
c. 381

2. This Act applies to complaints and inquiries made by members of the public respecting the conduct of police officers on the Metropolitan Police Force and hearings under this Act and disciplinary proceedings under the *Police Act* and the regulations thereunder arising out of such complaints. 1984, c. 63, s. 2.

Appointment
of Public
Complaints
Commissioner

3.—(1) The Lieutenant Governor in Council shall appoint a Public Complaints Commissioner, to hold office for a term not exceeding five years, to exercise the powers and perform the duties assigned to him by this Act and the regulations.

Re-
appointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding, in each instance, five years.

Officers,
etc.

R.S.O. 1980,
c. 418

(3) Such officers and employees as are considered necessary from time to time for the purposes of this Act may be appointed under the *Public Service Act*.

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received by him under this Act.

Monitoring
handling of
complaints
and inquiries

Annual
report

(6) The Commissioner shall monitor the handling of complaints and inquiries by the Bureau and the chief of police.

(7) The Commissioner shall report annually on the affairs of his office to the Solicitor General and to the Attorney General and the Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Summary of
decisions

(8) The Commissioner shall cause to be prepared and published periodically a summary of the decisions, and the reasons therefor, made by the boards of inquiry under this Act.

Audit

(9) The accounts of the Commissioner shall be audited annually by the Provincial Auditor. 1984, c. 63, s. 3.

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry.

Panel for
boards of
inquiry

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Recommen-
dations
for
appointment

(3) One-third of the members of the panel shall be persons, other than police officers, the appointment of whom the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association have jointly recommended in writing to the Attorney General. 1984, c. 63, s. 4 (1-3).

Idem

(3a) If the joint recommendations referred to in subsection (3) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make joint
recommen-
dations

(3b) Before making the recommendation referred to in subsection (3a), the Attorney General and the Solicitor General shall consider any recommendations made by the Metropolitan Board of Commissioners of Police alone or the Metropolitan Toronto Police Association alone. 1986, c. 31, s. 1, *part*.

Individual
recommen-
dations to be
considered

(4) One-third of the members of the panel shall be persons recommended by the council of The Municipality of Metropolitan Toronto to the Attorney General for appointment. 1984, c. 63, s. 4 (4).

Idem

(4a) If the recommendations referred to in subsection (4) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. 1986, c. 31, s. 1, *part*.

Failure
to make
recommen-
dations

(5) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

Idem (6) Recommendations made under subsections (3) and (4) shall be submitted to the Attorney General within such time as he may specify.

Members of Police Complaints Board under 1981, c. 43 (7) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (4) of this section, respectively.

NOTE: Subsection 34 (1) as mentioned in subsection (7) above repealed the *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43. See—1984, c. 63, s. 34 (1).

Remuneration (8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. 1984, c. 63, s. 4 (5-8).

Establishment of Bureau **5.—**(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

Staff (2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints and inquiries. 1984, c. 63, s. 5.

Where complaints may be made **6.—**(1) A member of the public may make a complaint at the Bureau, at any police station in Metropolitan Toronto or at the office of the Commissioner.

Information (2) The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights under this Act of the complainant, together with a copy of the complaint.

Preliminary investigation (3) Where a complaint is recorded at a police station, the officer in charge of the station shall take all reasonable steps to ensure that all available evidence is gathered that may be lost if not secured immediately and, if appropriate, ensure that such other preliminary investigation as may be warranted is conducted and that a report concerning such preliminary

investigation is prepared and forwarded to the person in charge of the Bureau.

(4) Where a complaint is recorded at a police station, the person recording the complaint shall forward forthwith to the Bureau and to the Commissioner a copy of the complaint. Copy of complaint

(5) Where a complaint is recorded at the Bureau, the person recording the complaint shall forward forthwith to the Commissioner a copy of the complaint. Idem

(6) Where a complaint is recorded at the office of the Commissioner, the person recording the complaint shall forward forthwith to the Bureau a copy of the complaint. 1984, c. 63, s. 6. Idem

7.—(1) Where a complaint is made by a person not directly affected by the incident, the Commissioner, as soon as practicable after receiving the complaint, shall in writing notify the person directly affected by the incident that a complaint has been made under this Act and advise him that he is entitled to be the complainant. Notification by Commissioner

(2) Where the person directly affected by the incident is not known or can not be found or does not, within thirty days of the date of the notification, file with the Commissioner a written request to be the complainant in the matter, no further action shall be taken under this Act in respect of such complaint. Where no action to be taken

(3) Nothing in subsection (2) shall prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder, and the chief of police shall notify the Commissioner if any such action is taken and the result thereof and either the chief of police or the Commissioner shall then notify the complainant. Action under R.S.O. 1980, c. 381

(4) For the purposes of this section a person who observes an incident shall be deemed to be a person directly affected by the incident. 1984, c. 63, s. 7. Person deemed directly affected

8.—(1) Upon receipt of a complaint, the person in charge of the Bureau may, with the consent of the Commissioner, reclassify any of the separate allegations within the complaint as an inquiry, and the complainant and the subject officer shall be notified forthwith. Reclassification by Bureau chief

(2) The person in charge of the Bureau shall determine whether any investigation is required in respect of an inquiry. Response

and if it is, cause such investigation to be conducted, respond to the complainant in writing within sixty days of receipt of the complaint and forward a copy of the response to the Commissioner forthwith.

Reclassification
during
investigation

(3) The person in charge of the Bureau may, during the course of an investigation under subsection (2), reclassify any of the separate allegations within the inquiry as a complaint, and the complainant, the subject officer and the Commissioner shall be notified forthwith.

Personal
record

(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2). 1984, c. 63, s. 8.

Police officer
to be
informed

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint. 1984, c. 63, s. 9.

Informal
resolution

10.—(1) The person in charge of the Bureau shall consider whether a complaint can be resolved informally and, with the consent of the complainant and the subject officer, may attempt to so resolve the complaint.

Record of
informal
resolution

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved and the complainant and the subject officer shall each signify in writing his agreement to such resolution.

Copy of
record to be
furnished

(3) A copy of a record made under subsection (2) shall be furnished forthwith to the Commissioner, the complainant and the subject officer.

Informal
resolution

(4) A complaint may be resolved informally by the person in charge of the Bureau in accordance with the procedures in this section at any time during the course of or after an investigation.

Where
complaint
to continue

(5) Notwithstanding subsection (1), where the Commissioner is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue and give reasons therefor in writing to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

(6) The decision of the Commissioner under subsection (5) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the *Judicial Review Procedure Act*. Review of decision
R.S.O. 1980,
c. 224

(7) A complaint may be resolved informally by the Commissioner in accordance with the procedures in this section at any time during the course of an investigation or review by the Commissioner. Informal resolution by Commissioner

(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer. 1984, c. 63, s. 10. No reference in personal record of subject officer

11.—(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures. Investigation

(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation. Interim reports

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the complainant or the subject officer where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Commissioner of the reasons for his decision. Exception

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the chief of police, the complainant and the subject officer. Final report

(5) A final investigation report prepared under subsection (4) shall, Idem

- (a) contain a summary of the complaint and a description of the alleged misconduct by the subject officer;

- (b) contain a summary of the investigation and of information obtained from the complainant, the subject officer and witnesses, if any; and
- (c) contain a description and analysis of any physical evidence obtained.

Further investigation at request of Commissioner

(6) The Commissioner may, upon receipt of a final investigation report, request that the chief of police cause further investigation to be made into the complaint and the results of any such investigation shall be forwarded to the Commissioner. 1984, c. 63, s. 11.

Withdrawal of complaint

12.—(1) All complaints and inquiries shall be dealt with in accordance with this Act, and shall not be withdrawn except in accordance with this Act.

Notice

(2) A complainant may withdraw a complaint at any time by giving notice, in the prescribed form, to the person in charge of the Bureau, who shall forward a copy thereof to the Commissioner and the subject officer.

Where to continue as complaint

(3) Notwithstanding subsection (2), where the Commissioner is of the opinion that the complainant withdrew the complaint as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue, and give reasons therefor, in writing, to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

R.S.O. 1980, c. 224

(4) The decision of the Commissioner to cause the complaint to continue shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Disciplinary action under R.S.O. 1980, c. 381

(5) Notwithstanding subsection (2), where a complaint has been withdrawn by a complainant, such withdrawal shall not prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder and the chief of police shall notify the Commissioner if any such action is taken and the result thereof. 1984, c. 63, s. 12.

Where complaint not to be dealt with

13.—(1) Where it appears to the chief of police that,

- (a) a complaint is frivolous, vexatious or made in bad faith;

- (b) a complaint is not within the jurisdiction of this Act;
or
- (c) a complaint is one that could or should be more
appropriately dealt with under an Act other than
this Act.

the chief of police may decide that the complaint or any part
thereof not be dealt with under this Act.

(2) The chief of police shall notify the Commissioner, the
complainant and the subject officer of any decision made
under subsection (1). Notice

(3) Notwithstanding subsection (1), the decision of the
chief of police shall not prevent the chief from taking any dis-
ciplinary action that he could otherwise take under the *Police*
Act and the regulations thereunder. Disciplinary
action under
R.S.O. 1980,
c. 381

(4) The complainant may, within thirty days of receiving
notification under subsection (2), request the Commissioner
to review the decision made under subsection (1), in which
case all the provisions of this Act relating to a review by the
Commissioner apply with necessary modifications. Review by
Commis-
sioner

(5) Notwithstanding subsection (4), where the Commis-
sioner is satisfied that there are reasonable grounds for grant-
ing an extension, the Commissioner may extend the time for
requesting a review. 1984, c. 63, s. 13. Extension
of time

14.—(1) The chief of police shall review a final investiga-
tion report and he may order such further investigation as he
considers advisable and may, unless he decides that no action
is warranted, Powers and
duties of
chief of
police

- (a) cause an information alleging the commission of an
offence by the subject officer to be laid and refer
the matter to the Crown attorney for prosecution;
- (b) order that one or more of the allegations contained
in the complaint be heard by a board of inquiry;
- (c) cause disciplinary proceedings to be taken under the
Police Act and the regulations thereunder; and R.S.O. 1980,
c. 381
- (d) after giving the subject officer ten working days to
reply, either orally or in writing, to the complaint,
counsel or caution the subject officer regarding his
conduct.

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

Hearing
not stayed

R.S.O. 1980,
c. 381

(2) Where the chief of police causes an information to be laid under clause (1) (a), such action shall not stay any disciplinary proceedings under the *Police Act* or any hearing by a board of inquiry unless the presiding officer or the board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

Review by
Commissioner

(3) A subject officer may within thirty days of the taking of any action under clause (1) (d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

Extension
of time

(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

Expunging
from
personal
record

(5) Any action taken under clause (1) (d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

Notice of
action taken

(6) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Commissioner, the complainant and the subject officer and, where his decision is that no action is warranted or he has taken action under clause (1) (d), the chief of police shall give his reasons therefor.

Designation
by chief
of police

(7) The chief of police may designate any police officer of the rank of inspector or higher to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the police officer so designated. 1984, c. 63, s. 14.

Application
of s. 23
R.S.O. 1980,
c. 381

15.—(1) Where the chief of police has caused disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder, subsections 23 (6), (8), (13), (14) and (15) of this Act apply with necessary modifications to a hearing held in connection with such proceedings.

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection (1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Commissioner, the complainant and the subject officer. 1984, c. 63, s. 15.

Notice of
decision

16. Where a hearing referred to in subsection 15 (1) has been held and a penalty has been imposed upon a subject officer, the officer may appeal in accordance with the provisions of this Act and not as provided in the *Police Act* and the regulations thereunder. 1984, c. 63, s. 16.

Police officer
may appeal

R.S.O. 1980,
c. 381

17.—(1) A notice of appeal under section 16 shall be served on the Commissioner and the chief of police within fifteen days after the subject officer receives notice of the penalty imposed, and the Commissioner shall notify the complainant forthwith.

Notice of
appeal

(2) Where a notice of appeal is filed after the time set out in subsection (1), the Commissioner shall assign, in accordance with the regulations, the matter to a member of the panel appointed on a recommendation made under subsection 4 (2) who may, if satisfied that there are reasonable grounds for doing so, extend the time for appealing and give such directions as he considers proper consequent upon the extension. 1984, c. 63, s. 17.

Extension
of time

18.—(1) Notwithstanding any other provision of this Act, the Commissioner may investigate the allegations in the complaint,

Commis-
sioner
may
investigate

- (a) at any time after he receives the first interim report under subsection 11 (2) or the thirty-day period mentioned therein has expired;
- (b) upon the request of the chief of police; or
- (c) where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 11.

(2) A decision to take action under clause (1) (c) shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Review of
decision

R.S.O. 1980,
c. 224

(3) The Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an investigation under clause (1) (a) or (c) and shall give his reasons therefor in writing.

Notice
to chief
of police

Idem

(4) Where the Commissioner conducts an investigation under subsection (1), he shall forward to the complainant, the subject officer, the person in charge of the Bureau and the chief of police an interim report in the prescribed form providing a summary of the investigation to date, not later than thirty days after he has given notification of his intention to conduct an investigation, and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation, and upon the completion of his investigation he shall prepare a final investigation report and forward a copy thereof to the same persons.

Notice of
action taken

(5) The chief of police, upon receipt of a final investigation report under subsection (4), shall review the report, together with any final investigation report prepared under subsection 11 (4), and shall make a decision in accordance with section 14 and shall notify all persons in accordance with subsection 14 (6).

Delegation

(6) The Commissioner may designate any person appointed under subsection 3 (3) to exercise any of his powers and perform any of his duties under this Act, and the person so designated has the powers and the duties set out in the designation, and where any power is conditional upon the opinion of the Commissioner, the requisite opinion shall be that of the designated person. 1984, c. 63, s. 18.

Request
for review

19.—(1) Where a complainant is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of a board of inquiry or with action taken by the chief of police under clause 14 (1) (d) or with a decision of the chief of police that no action is warranted, he may within thirty days of receipt of notification under subsection 14 (6) or 15 (2) request the Commissioner to review the matter.

Extension
of time

(2) Notwithstanding subsection (1), where the Commissioner is satisfied that there are reasonable grounds for granting an extension the Commissioner may extend the time for requesting a review.

Hearing may
be ordered

(3) Where the Commissioner receives a request under subsection (1), he shall review the matter and may, after such review, order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required or he may decide to take no further action.

Notice

(4) The Commissioner shall give forthwith written notice to the chief of police, the complainant and the subject officer of

his decision under subsection (3) and, where his decision is to take no further action, shall give his reasons therefor.

(5) Where a subject officer has appealed under section 16 a hearing ordered under subsection (3) shall be heard together with that appeal. 1984, c. 63, s. 19.

Where
appeal under
s. 16

20.—(1) For the purposes of an investigation under section 18 or a review under section 19, the Commissioner may, where he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, after informing the chief of police, enter a police station and examine therein books, papers, documents and things related to the complaint.

Powers on
investigation
or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation or review as if it were an inquiry under that Act.

Powers on
inquiry

R.S.O. 1980,
c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review he is authorized to make and the person so appointed has all the powers and duties of the Commissioner relating to the investigation and the review.

Appointment
of person
to make
investigation
or review

(4) The Commissioner shall issue a certificate of appointment to any person appointed to make an investigation or review under subsection (3), which certificate shall contain a photograph of the person appointed, and the person appointed, while exercising any powers or performing any duties in respect of the investigation or review, shall produce the certificate of appointment upon request.

Identification

(5) The person appointed to make an investigation or review shall report the results of his investigation or review to the Commissioner.

Report

(6) No person shall obstruct the Commissioner or a person appointed by him to make an investigation or review or withhold from him or conceal or destroy any books, papers, documents or things related to the investigation or review.

Obstruction

(7) Where a justice of the peace is satisfied upon an *ex parte* application by the Commissioner or by a person appointed by him under subsection (3) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to an investigation or review, the justice of the peace may issue an order authorizing the person making the application, together with such persons as he calls upon to assist

Search
warrant

him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between 6 a.m. and 9 p.m., standard time, unless the justice of the peace, by the order, otherwise authorizes.

Removal of
books, etc.

(8) The Commissioner may, upon giving a receipt therefor, remove any books, papers, documents or things examined under subsection (1) or (7) relating to the investigation or review and shall with reasonable dispatch cause to be made copies of such books, papers or documents and return them promptly thereafter to the person from whom they were removed.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the Commissioner is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment
of experts

(10) The Commissioner may appoint an expert to examine books, papers, documents or things examined under subsection (1) or (7). 1984, c. 63, s. 20.

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the Metropolitan Board of Commissioners of Police shall forward such report along with their comments and any comments submitted to them by the chief of police or the Metropolitan Toronto Police Association, to the Attorney General, the Solicitor General and the Commissioner. 1984, c. 63, s. 21.

Where board
of inquiry to
be
constituted

22.—(1) Where,

- (a) the chief of police has ordered that a matter be heard by a board of inquiry;
- (b) a police officer has appealed under section 16; or
- (c) the Commissioner has, under subsection 19 (3), ordered a hearing.

a board of inquiry shall be constituted in accordance with this section.

(2) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a minor nature, he shall assign, in accordance with the regulations, a member of the panel who was appointed on a recommendation made under subsection 4 (2) to sit alone to conduct the hearing.

Assignment
to board
of inquiry

(3) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a serious nature, he shall assign, in accordance with the regulations, three members of the panel to conduct the hearing.

Idem

(4) Where, following a disciplinary hearing under the *Police Act* a board of inquiry is to be constituted, the board shall be constituted in accordance with subsection (3).

Constitution
of board
R.S.O. 1980,
c. 381

(5) The chairman of a board of inquiry constituted under subsection (3) or (4) shall be a person appointed to the panel on a recommendation made under subsection 4 (2), one member shall be a person appointed to the panel on a recommendation made under subsection 4 (3) and one member shall be a person appointed to the panel on a recommendation made under subsection 4 (4).

Who shall be
on board

(6) The chief of police, where he has ordered a hearing, and the Commissioner, where he has ordered a hearing, shall provide the parties with a concise statement of the allegations of misconduct to be heard by the board.

Statement
of alleged
misconduct

(7) Where, following a hearing referred to in subsection 15 (1), a board of inquiry has been constituted, the chief of police shall forward the record of that hearing, including the transcript, all documents, evidence and exhibits considered at that hearing, to the board.

Record

(8) Where the Commissioner has ordered the hearing he shall pay the costs of preparing the record. 1984, c. 63, s. 22.

Costs of
record

When
hearing
de novo and
when on
record

23.—(1) The hearing before the board of inquiry shall be *de novo*, except where the chief of police has prepared a record under subsection 22 (7), in which case the hearing shall be on the record but the board may, in special circumstances, hear such evidence as the board considers advisable.

Parties

(2) The parties to a hearing shall include.

- (a) the chief of police, in respect of appeals instituted by the subject officer under section 16; and
- (b) the Attorney General, except where an appeal has been instituted by the subject officer under section 16.

Adding
parties

(3) A party may be added by the board at any stage of the hearing upon such terms as the board considers proper.

Attorney
General to
have carriage

(4) The Attorney General, where he is a party to the hearing, has carriage of the matter.

Notice of
hearing

(5) The board shall appoint a time for a hearing and give written notice thereof to the parties.

Opportunity
to examine
evidence

(6) The subject officer and the complainant shall be afforded an opportunity to examine before the hearing any physical or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Board not
to
communicate
with party

(7) The board conducting a hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Oral
evidence

(8) The oral evidence given at the hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Adjournment
for view

(9) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Only
members at
hearing to
participate
in decision

(10) No member of the board shall participate in a decision following the hearing unless he was present throughout the

hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision shall be given unless all members so present participate in the decision.

(11) A decision of a member of a board of inquiry sitting alone and a decision of a majority of the members of a board comprising three members is a decision of the board. Decision

(12) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him within a reasonable time after the matter in issue has been finally determined. Release of documents

(13) Notwithstanding section 12 of the *Statutory Powers Procedure Act*, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent. Police officer not required to give evidence
R.S.O. 1980, c. 484

(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such attempt by the subject officer or by the complainant shall not be admitted in evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be. Statement or admission not admissible in evidence

(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt. Proof of misconduct

(16) Where a board constituted under subsection 22 (2) finds the subject officer guilty of misconduct, it may, Imposition of penalty

- (a) direct that days off not exceeding five days be forfeited;
- (b) direct that pay not exceeding three days pay be forfeited; or
- (c) reprimand the police officer.

(17) Where a board constituted under subsection 22 (3) finds the subject officer guilty of misconduct, it may, Idem

- (a) dismiss the police officer from the Metropolitan Police Force, whereupon the officer is thereby dismissed;

- (b) direct that the police officer resign from the Metropolitan Police Force and, in default of resigning within seven days, be summarily dismissed;
- (c) reduce the police officer in rank or gradation of rank and in pay in accordance with the rank to which he is reduced;
- (d) direct that days off not exceeding twenty days be forfeited;
- (e) direct that pay not exceeding five days pay be forfeited; or
- (f) reprimand the police officer, which reprimand may be in lieu of or in addition to any other penalty imposed.

Notice of
decision

(18) The board shall give forthwith written notice of its decision and the reasons therefor to the chief of police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

No reference
to hearing

(19) No reference to a hearing conducted by the board shall be made in the personal record of the subject officer unless the board has made a finding of misconduct.

Costs may
be paid

(20) The Metropolitan Board of Commissioners of Police may, in such cases and to such extent as it thinks fit, pay any legal costs incurred by a subject officer in respect of a hearing conducted by a board and an appeal under section 24. 1984, c. 63, s. 23.

Appeal

24.—(1) A party to a hearing by a board may appeal within thirty days of the decision of the board to the Divisional Court.

Solicitor
General and
Attorney
General
entitled to
be heard

(2) The Solicitor General, and the Attorney General where he is not entitled to appeal under subsection (1), are entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

What may
be appealed

(3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under subsection 23 (17), or on both the question and the penalty. 1984, c. 63, s. 24.

How notice,
etc., may
be served

25. Any notice, report or other material required to be given, furnished, forwarded or otherwise served under this Act is sufficiently served if delivered personally or sent by

prepaid first class mail addressed to the person on whom service is required to be made at his last known or usual place of abode. 1984, c. 63, s. 25.

26.—(1) Every person engaged in the administration of this Act and the regulations, including a member of the Metropolitan Police Force, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties and shall not communicate any such matter to any other person except,

Matters
confidential

- (a) as may be required in connection with the administration of this Act and the regulations or the *Police Act* and the regulations thereunder;
- (b) as may be required for the due enforcement of the law;
- (c) to his counsel; or
- (d) with the consent of the person to whom the matter relates.

R.S.O. 1980,
c. 381

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

Testimony

(3) No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

What is
inadmissible
in evidence

(4) No oral statement, answer or admission referred to in subsections 23 (13) and (14) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder. 1984, c. 63, s. 26.

Idem

R.S.O. 1980,
c. 381

27. Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to a board hearing. 1984, c. 63, s. 27.

Application
of 1984,
c. 11, s. 146

28. The *Ombudsman Act* does not apply to anything done under this Act. 1984, c. 63, s. 28.

R.S.O. 1980,
c. 325 does
not apply

Agreement
for
contributions

29. The Attorney General, with the approval of the Lieutenant Governor in Council, and The Municipality of Metropolitan Toronto may enter into an agreement to provide for the payment by the municipality to the Treasurer of Ontario on such terms and conditions as may be agreed upon of contributions in respect of the moneys required for the purposes of this Act. 1984, c. 63, s. 29.

Offence

30. Any person who contravenes subsection 20 (6), subsection 26 (1) or section 27 is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1984, c. 63, s. 30.

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) respecting the reporting and publication of decisions of boards of inquiry;
- (b) assigning duties to the Commissioner;
- (c) establishing a system that provides for the assignment of panel members on a rotational basis;
- (d) prescribing forms and providing for their use; and
- (e) prescribing any matter that by this Act is required to be or is referred to as prescribed. 1984, c. 63, s. 31.

Advisory
committee

32.—(1) There shall be a committee composed of,

- (a) the Deputy Attorney General;
- (b) the Deputy Solicitor General;
- (c) the chairman of the Ontario Police Commission;
- (d) the Commissioner;
- (e) the Assistant Deputy Attorney General-Criminal Law; and
- (f) such other persons as may be jointly appointed by the Attorney General and the Solicitor General.

Duties

(2) It is the duty of the committee,

- (a) to maintain under review the practice and procedures under this Act;

- (b) to receive and consider matters brought to the attention of the committee by any person having an interest in the operation of the system for handling complaints under this Act;
- (c) to make such recommendations as the committee considers appropriate for the improvement of the system for handling complaints; and
- (d) to perform such other duties or functions as the committee may be requested to perform by the Attorney General or the Solicitor General.

(3) Any recommendations made under clause (2) (c) shall be forwarded by the committee to both the Attorney General and the Solicitor General. 1984, c. 63, s. 32.

Recommendations

33. On or before the day that is three years after the day this Act comes into force, the Attorney General shall, after having reviewed the operation of the panel, the Board and the advisory committee referred to in sections 4 and 32 respectively, recommend to the Lieutenant Governor in Council whether those bodies should continue in existence or be terminated. 1984, c. 63, s. 33.

Recommendation of Attorney General

34.—(1) The *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43, is repealed.

Repeal

(2) Notwithstanding subsection (1), the *Metropolitan Police Force Complaints Project Act, 1981* shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

Proceedings continued under 1981, c. 43

35. This Act comes into force on the 21st day of December, 1984.

Commencement

36. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Short title

ONTARIO REGULATION 494/85

under the Metropolitan Toronto Police Force Complaints Act, 1984

GENERAL FORMS

1. A complaint shall be recorded in Form 1. O. Reg. 494/85, s. 1.
2. The subject officer shall be informed of the substance of the complaint in Form 1A. O. Reg. 494/85, s. 2.
3. The statement to be furnished under subsection 6 (2) of the Act to the person making the complaint shall be in Form 2. O. Reg. 494/85, s. 3.
4. A record of an informal resolution of a complaint shall be in Form 3. O. Reg. 494/85, s. 4.
5. An interim or final investigation report under subsection 11 (2), 11 (4) or 18 (4) of the Act shall be in Form 4. O. Reg. 494/85, s. 5.
6. A notice of withdrawal of a complaint shall be in Form 5. O. Reg. 494/85, s. 6.

BUREAU INVESTIGATIONS

7. An investigation under section 11 of the Act shall be pursued quickly and diligently and the investigator shall endeavour to obtain all information that may have a bearing on the complaint. O. Reg. 494/85, s. 7.
8. All information and evidence obtained in the investigation shall be recorded and preserved. O. Reg. 494/85, s. 8.
9. The investigator shall endeavour to interview the person making the complaint and the subject officer and to obtain written statements from them. O. Reg. 494/85, s. 9.
10. The investigator shall endeavour to interview the witnesses named by the person making the complaint and the subject officer and witnesses located as a result of the investigation and to obtain written statements from such witnesses. O. Reg. 494/85, s. 10.
11. The investigator shall endeavour to obtain photographs of all personal injuries or damage to property alleged and any other information and evidence that is relevant to the investigation and could only be preserved by way of photographs. O. Reg. 494/85, s. 11.
12. Where appropriate, the investigator shall attend at the scene of the alleged misconduct and obtain any relevant evidence. O. Reg. 494/85, s. 12.

13. The investigator shall endeavour to obtain all hospital records and medical reports related to the complaint. O. Reg. 494/85, s. 13.

14. The investigator shall make notes during or as soon as possible after completion of each investigative step and the notes shall be preserved. O. Reg. 494/85, s. 14.

15. Any information, notes or evidence, except physical evidence, that is required to be preserved under sections 8 and 14 shall be retained for a period of two years after the complaint is finally disposed of. O. Reg. 494/85, s. 15.

ASSIGNMENT OF PANEL MEMBERS

16. The Commissioner shall prepare three lists of names of persons appointed to the panel under subsection 4 (1) of the Act; one consisting of those persons recommended under subsection 4 (2) of the Act; one consisting of those persons recommended under subsection 4 (3) of the Act and one consisting of those persons recommended under subsection 4 (4) of the Act. O. Reg. 494/85, s. 16.

17. For the purposes of sections 17 and 22 of the Act, the Commissioner shall assign, to consider extending time to appeal or to conduct a hearing, as the case may be, the person whose name appears at the beginning of the appropriate list or lists. O. Reg. 494/85, s. 17.

18. The name of a person assigned to conduct a hearing shall, following such assignment, be removed from the beginning of the list and added to the end of the list. O. Reg. 494/85, s. 18.

19. If a person is unable to perform his or her duties or is unable to act within a time determined by the Commissioner to be reasonable, the Commissioner, upon being so informed, shall assign as a replacement the next person on the list, and the name of the person who is so replaced shall remain at the beginning of the list. O. Reg. 494/85, s. 19.

20. If, at any time, a person resigns as a member of the panel, the name of that person shall be deleted from the appropriate list. O. Reg. 494/85, s. 20.

21. If, at any time, a new person is appointed to the panel, the name of that person shall be placed at the end of the appropriate list. O. Reg. 494/85, s. 21.

Bill 18

APPENDIX B

Government Bill

3RD SESSION, 33RD LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 18

An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984

The Hon. I. Scott
Attorney General

1st Reading May 4th, 1987

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is to permit the extension of the police complaints procedure to municipalities other than Metropolitan Toronto on the request of the municipality.

SECTIONS 1 and 2. The amendments to the definitions adjust the terminology so that it is not confined to Metropolitan Toronto but can apply to any municipality to which the Act applies. The Commissioner's title is changed from "Public Complaints Commissioner" to "Police Complaints Commissioner".

SECTION 3. The new section authorizes municipalities to adopt by-laws requesting the Lieutenant Governor in Council to designate them by regulation (under clause 31 (ca) of the Act, as enacted by section 16 of the Bill). A regulation may only be made where such a by-law is passed.

SECTIONS 4 to 7. The amendments make no change in substance except to refer to all designated municipalities.

SECTION 8. Under existing section 11 of the Act the report of the Bureau's investigation is given to certain persons. The amendment would provide that the result of a further investigation by the chief of police on the request of the Commissioner be given to the same persons.

SECTION 9. Existing section 14 authorizes the chief of police to delegate to an officer of the rank of inspector or higher. The amendment permits the delegation to be to a senior officer where the police force does not have the rank of inspector.

SECTION 10. The amendment removes any doubt that the appeal from the decision of a chief of police on a disciplinary hearing is to be taken under the *Metropolitan Toronto Police Force Complaints Act, 1984* and not the *Police Act*.

SECTIONS 11 to 15. See explanatory note for sections 4 to 7 (except for subsection 13 (1)).

Clause 23 (2) (b) of the Act makes the Attorney General a party to hearings before a board of inquiry, except when the hearing is in respect of a penalty imposed on an officer. The amendment in subsection 13 (1) ensures that the Attorney General is not excluded from participating where the officer's hearing is combined with the complainant's hearing.

SECTION 16. The amendment authorizes a municipality to be designated by regulation where it has passed a by-law requesting the designation.

SECTION 17. The short title of the Act is amended to remove specific reference to the Metropolitan Police Force.

Bill 18

1987

**An Act to amend the
Metropolitan Toronto Police Force
Complaints Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clauses 1 (a) and (b) of the *Metropolitan Toronto Police Force Complaints Act, 1984*, being chapter 63, are repealed and the following substituted therefor:

(a) "Bureau" means a Public Complaints Investigation Bureau established under section 5.

(2) Clause 1 (c) of the said Act is amended by striking out "Public" in the first line and inserting in lieu thereof "Police".

(3) Section 1 of the said Act is amended by adding thereto the following clause:

(ea) "designated municipality" means The Municipality of Metropolitan Toronto and the municipalities that are designated by a regulation made under clause 31 (ca).

(4) Clause 1 (i) of the said Act is repealed and the following substituted therefor:

(i) "police association" means the association as defined in the *Police Act* for the police force of a designated municipality.

R.S.O. 1980,
c. 381

(5) Section 1 of the said Act is further amended by adding thereto the following subsection:

(2) A reference in this Act to a police officer, chief of police, police force, Bureau, board of inquiry or panel for

References to
local bodies

boards of inquiry means the one appointed or established for the designated municipality that the subject officer serves.

2. Section 2 of the said Act is amended by striking out "Metropolitan Police Force" in the third line and inserting in lieu thereof "police force of a designated municipality".

3. The said Act is amended by adding thereto the following section:

By-laws to
request
application of
Act
R.S.O. 1980,
c. 381

2a.—(1) The council of a municipality that maintains a police force other than by agreement under section 64 of the *Police Act* may by by-law request the Lieutenant Governor in Council to designate the municipality as one to which this Act applies.

Idem

(2) The council of a municipality that maintains a police force by agreement under section 63 of the *Police Act* may pass a by-law under subsection (1) only if the municipality providing the services is a designated municipality.

4.—(1) Subsection 3 (1) of the said Act is amended by striking out "Public" in the second line and inserting in lieu thereof "Police".

(2) Section 3 of the said Act is amended by adding thereto the following subsections:

Local offices

(6a) The Commissioner shall establish a local office in each designated municipality.

Communi-
cation to
Commis-
sioner by
local office

(6b) Any matter or thing that is required or permitted by this Act to be given to or served upon the Commissioner shall be given or served at the local office of the Commissioner.

5. Section 4 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 31, section 1, is repealed and the following substituted therefor:

Panels for
boards of
inquiry

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons for each designated municipality to act as members of boards of inquiry.

Recommen-
dations for
appointment

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers, who are jointly recommended for

appointment by the board of commissioners of police of the designated municipality, or, where there is no board, the council, and by the police association, if any.

(4) If the joint recommendations referred to in subsection (3) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make joint
recommendations

(5) Before making the recommendation referred to in subsection (4), the Attorney General and Solicitor General shall consider any recommendations made by the board of commissioners of police or council alone or the police association alone.

Individual
recommendations to be
considered

(6) One-third of the members of the panel shall be persons recommended for appointment by the council of the designated municipality.

Recommendations for
appointment

(7) If the recommendations referred to in subsection (6) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make
recommendations

(8) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

(9) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board of inquiry to which the member was assigned before the expiration of the term.

Continuance
in office for
uncompleted
assignments

(10) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (6) of this section, respectively.

Members of
Police
Complaints
Board under
1981, c. 43

Remuner-
ation

(11) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

6. Subsection 5 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

7. Subsection 6 (1) of the said Act is amended by striking out "Metropolitan Toronto" in the second line and inserting in lieu thereof "the designated municipality".

8. Subsection 11 (6) of the said Act is amended by adding at the end thereof "the chief of police, the complainant and the subject officer".

9. Subsection 14 (7) of the said Act is amended by inserting after "higher" in the second line "or, if none, a senior officer who is not a member of the police association".

10. Section 16 of the said Act is amended by striking out "the officer may appeal" in the third line and inserting in lieu thereof "any appeal therefrom shall be taken".

11. Section 21 of the said Act is repealed and the following substituted therefor:

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the board of commissioners of police or council, as the case may be, shall forward the report along with their comments and any comments submitted to them by the chief of police or the police association, to the Attorney General, the Solicitor General and the Commissioner.

12. Subsection 22 (5) of the said Act is amended by inserting after "subsection 4 (3)" in the fifth line "or (4), as the case may be" and by striking out "4 (4)" in the seventh line and inserting in lieu thereof "4 (6) or (7), as the case may be".

13.—(1) Clause 23 (2) (b) of the said Act is amended by striking out "where an appeal" in the first line and inserting in lieu thereof "in respect of an appeal that".

(2) Clause 23 (17) (a) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(3) Clause 23 (17) (b) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(4) Subsection 23 (20) of the said Act is amended by striking out "Metropolitan Board of Commissioners of Police" in the first line and inserting in lieu thereof "board of commissioners of police for the designated municipality or, where there is no board, the council".

14. Subsection 26 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

15. Section 29 of the said Act is amended by striking out "The Municipality of Metropolitan Toronto" in the second and third lines and inserting in lieu thereof "a designated municipality".

16. Section 31 of the said Act is amended by adding thereto the following clause:

(ca) designating a municipality that has passed a by-law under section 2a as a municipality to which this Act applies.

17. Section 36 of the said Act is repealed and the following substituted therefor:

36. The short title of this Act is the *Police Force Complaints Act, 1984*. Short title

18. This Act comes into force on the day it receives Royal Assent. Commencement

19. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Amendment Act, 1987*. Short title